Mar 29 Submitted
argued by Mr Carnes
Mar 29 Affirmed Nelson.

247.

SUPREME COURT OF THE UNITED STATES.

No. ~~312~~. 225.140

WILLIAM Y. BROWN, PL'FF IN ER.,

vs.

WILLIAM C. TARKINGTON AND AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 312.

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vs.

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1 Pleas of the circuit court of the United States for the eighth judicial circuit and district of Indiana, begun and holden at Indianapolis, in said district, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, before the honorable David Davis, one of the justices of the Supreme Court of the United States.

WILLIAM YOUNG BROWN *vs.* WILLIAM C. TARKINGTON, RANSOM W. AKIN, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Milton Hight, and Francis M. Akin.	Assumpsit.

Be it remembered, that heretofore, to wit, on the 24th day of February, A. D. 1859, comes said plaintiff, by his attorneys, and files in the clerk's office of said court his certain præcipe in writing, in the words and figures following, to wit:

Circuit court, U. S., 7th circ't and district of Indiana.

WILLIAM YOUNG BROWN *vs.* 2 WILLIAM C. TARKINGTON, RANSOM W. Akin, Joseph M. Howe, Benjamin B. Barkalow, Samuel C. Campbell, Frank M. Akin, William H. Baird, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Wm. D. Alexander, L. M. Hays, Milton Hight, and D. L. Barkalow.	Assumpsit. Dam., $25,000 00.

Issue a summons in assumpsit, returnable according to law. Endorse suit brought to recover upon four notes at hand, given by the "Bank of Tekama," an incorporated company, of which def'ts were members. One note, dated April 28th, 1858, for $2,100, due at forty days; one note, for $2,000, dated June 9th, 1858, due at ninety days; one note, dated June 9th, 1858, due at ninety days, for $2,912 50; and the other dated June 9th, 1858, at sixty days, for $5,865; the last three payable at the Corn Exchange Bank, New York, and the first at the Franklin branch of the State Bank of Ohio, at Cincinnati. Also, upon $25,000 of the currency of said Bank of Tekama.

3 Also, for money had and rec'd, goods sold and delivered, money due on account stated, &c. Damages, $25,000. Pl'ff is a citizen of Ohio, and def'ts of Indiana.

LEE & FISHER, and
CALEB B. SMITH,
Pl'ff's Att'ys.

H. BASSETT,
Cl'k of s'd court.

And on the same day there issued from the clerk's office of said court a writ of summons, in the words and figures following, to wit:

The President of the United States to the marshal of the district of Indiana, greeting:

You are hereby commanded to summon William C. Tarkington, Ransom W. Akin, Joseph M. Howe, Benjamin B. Barkalow, Samuel L. Campbell, Frank M. Akin, William H. Baird, Joseph E. Goss, William M. Akin, A. W. Springer, James Hughes, William D. Alexander, L. M. Hays, Milton Hight, and D. L. Barkalow, if they may be found in your district, to be and appear before the circuit court of the United States for the district of Indiana, to be holden before the judges thereof, at Indianapolis, in said district, on the third Monday in May next, to answer unto William Young Brown, citizen of the State of Ohio, in a plea of assumpsit.

4 Damages, twenty-five thousand dollars, ($25,000.)

And have you then and there this writ.

[SEAL.] Witness honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, hereunto affixed at Indianapolis, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and fifty-nine.

H. BASSETT, *Clerk*

Suit bro't to recover upon four notes of hand given by the Bank of Tekama, an incorporated company, of which def'ts were members. One note, dated April 28, 1858, for $2,100, due at forty days; one note for $2,000, dated June 9, 1858, due at ninety days; one note, dated June 9th, 1858, due at ninety days, for $2,912 50; and the other, dated June 9th, 1858, at sixty days, for $5,865; the last three payable at the Corn Exchange Bank, New York, and the first at the Franklin branch of the State Bank of Ohio, at Cincinnati. Also, upon $25,000 of the currency of said Bank of Tekama. Also, for money had and rec'd, goods sold and delivered, money due on account stated, &c. Da's $25,000. Pl'ff is a citizen of Ohio, and def'ts of Indiana.

LEE & FISHER, and
CALEB B. SMITH,
Pl'ff's Att'ys.

H. BASSETT,
Cl'k of said court.

5 And said writ was then and there delivered to the marshal of said district, and by him afterwards duly returned to the office from whence it issued, with the following endorsement thereon, to wit:

"Served the within as commanded on Joseph E. Goss, by copy left in the hands of his wife, at his last usual place of residence in Gosport, Owen county, Indiana; also, on L. M. Hayes, by reading

and copy delivered into his own hands personally, in Gosport, Owen county, Indiana, March the 22d, 1859, and on Joseph M. Howe and on Milton Height, by reading and copy delivered into each of their hands personally, in Bloomington, Monroe county, Indiana, March 22d, 1859, and on James Hughes and Ransom M. Akin, by reading and copy delivered into each of their hands personally, in Bloomington, Monroe county, Indiana, March 23d, 1859, and on Samuel L. Campbell, by reading and copy delivered into his hands personally, in New Albany, Floyd county, Indiana, April 7th, 1859.

"JOHN L. ROBINSON, *Marshal*,
"By DAVID LAING, *Deputy*."

Served the within as commanded on William C. Tarkington, by reading and copy delivered into his own hands personally,
6 in Indianapolis, Indiana, March the 4th, 1859, and on A. W. Springer, Frank M. Akin, and William M. Akin, by reading and copy delivered into each of their hands personally, in Carlisle, Sullivan county, Indiana, March 19, 1859.

JOHN L. ROBINSON, *Marshal*,
By SAM'L BARBOUR, *Deputy*.

Fees made by D. Laing in this case:

Service on Campbell & copy	$3 00
R. R. fare to Jeffersonville	6 50
Hack	1 00
Two days, time	4 00
Hotel bill	3 00
Service on 6 at Gosport and Bloomington & copies	18 00
R. R. fare	5 00
Hotel bills	4 50
Omnibus	1 00
4 days	8 00
	$54 00

Fees made by Samuel Barbour:

Service on Tarkington, Springer, Frank M. Akin, and William M. Akin, & copies	12 00
R. R. fare	7 30
Omnibus "	1 00
3 days	6 00
Hotel	4 50
Return	10
Sum total	$84 90

Rec'd from pl'ff on above twenty dollars, before serving same.
SAM'L BARBOUR, *Deputy*.

7 And afterwards, to wit, on the 4th day of May, A. D. 1859, the said plaintiff, by his said attorneys aforesaid, filed in the clerk's office of said court his certain declaration in the above cause, which is in the words and figures following, to wit:

Declaration.

"Circuit Court U. S., 7th Circuit and District of Indiana.

WILLIAM YOUNG BROWN *vs.* WILLIAM C. TARKINGTON, RANSOM W. AKIN, Joseph M. Howe, Samuel L. Campbell, Frank M. Akin, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, L. M. Hays, and Milton Height.	Assumpsit.

The plaintiff, William Young Brown, a citizen of the State of Ohio, complains of William C. Tarkington, Ransom W. Akin, Joseph E. Goss, Joseph M. Howe, Samuel L. Campbell, Frank M. Akin, H. W. Springer, James Hughes, L. M. Hays, Milton Height, and William M. Akin, impleaded with Benjamin B. Barkalow, William H. Baird. William D. Alexander, and D. L. Barkalow, all
8 citizens of the State of Indiana, defendants, in a plea of assumpsit, for that: whereas, the said defendants, on the 28th day of April, A. D. 1858, at the city of St. Louis, in the State of Missouri, were partners in business, as bankers and brokers, doing an exchange business, under the name and style of Bank of Tekama, and having, for their president and acting agent, one S. L. Campbell, who had by them been authorized and empowered to execute and deliver notes and bills of exchange in the name of said "Bank of Tekama," and thereupon the said defendants, on the day and year aforesaid, at the city of St. Louis, to wit, at the district of Indiana aforesaid, made their promissory notes in writing, signed S. L. Campbell, President Bank of Tekama, and delivered the same to the said plaintiff, and thereby promised to pay to the said plaintiff or order twenty-one hundred dollars, in forty days after the date thereof, being the date aforesaid, at the Franklin branch of the State Bank of Ohio, at Cincinnati, which period has now elapsed; and the said defendants then and there, in consideration of the premises, promised to pay the amount of the said note to the said plaintiff, according to the tenor and effect thereof.

9 And also for that, whereas, the said defendants, on the 9th day of June, A. D. 1858, were partners in business as bankers and brokers, doing an exchange business at the city of Saint Louis, in the State of Missouri, and having, for their president and acting agent, one S. L. Campbell, who had been by them authorized and empowered to execute and deliver notes and bills of exchange in the name of said "Bank of Tekama," and thereupon, the said defendants, on the day and year aforesaid, at the city of Saint Louis, to that, at the district aforesaid, made their promissory note in writing, signed S. L. Campbell, President Bank of Tekama, and delivered the same to plaintiff, and thereby promised to pay the order of plaintiff

two thousand dollars, at the Corn Exchange Bank in New York, in ninety days from the date thereof, being the date last aforesaid, which period has now elapsed; and the said defendants, in consideration of the premises, promised to pay the amount of said note to plaintiff, according to the tenor and effect thereof.

11 And also for that, whereas the said defendants, on the 9th day of June, A. D. 1858, were partners in business as bankers and brokers, doing an exchange business at the city of St. Louis, in the State of Missouri, and having, for their president and agent, an S. L. Campbell, who had by them been authorized and empowered to execute and deliver notes and bills of exchange in the name of said Bank of Tekama, and thereupon the said defendants, on the day and year aforesaid, at the city of St. Louis, to wit, at the district aforesaid, made their promissory note in writing, signed S. L. Campbell, President Bank of Tekama, and delivered the same to plaintiff, and thereby promised to pay to the order of plaintiff two thousand nine hundred and twelve dollars and fifty cents, ($2,912 50,) in ninety days after the date thereof, being the date last aforesaid, at the Corn Exchange Bank in New York, which period has now elapsed, and the said defendants then and there, in consideration of the premises, promised to pay the amount of the said note, according to the tenor and effect thereof.

12 And also for that, whereas the said defendants, on the 9th day of June, A. D. 1858, at the city of St. Louis, in the State of Missouri, were partners in business as bankers and brokers, doing an exchange business at said place, and having, for their president and agent, one S. L. Campbell, who had been by them authorized and empowered to make and deliver notes and bills of exchange in the name of said Bank of Tekama, and thereupon the said defendants, on the day and year aforesaid, at the city of St. Louis, to wit, at the district of Indiana aforesaid, made their promissory note in writing, signed S. L. Campbell, President Bank of Tekama, and delivered the same to plaintiff, and thereby promised to pay to the order of plaintiff five thousand eight hundred and sixty-five dollars, ($5,865,) in sixty days after the date thereof, at the Corn Exchange Bank in New York, bearing date June 9th, 1858, as aforesaid, which period has now elapsed; and the said defendants then and there, in consideration of the premises, promised to pay the amount of said note to the plaintiff, according to the tenor and effect thereof.

13 And also for that, whereas the said defendants, on the 9th day of June, A. D. 1858, at the district of Indiana aforesaid, were indebted to plaintiff in the sum of twenty-five thousand dollars, for the price and value of goods then and there bargained and sold by the plaintiff to said defendants at their request; and in the sum of twenty-five thousand dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendants at their request; and in the sum of twenty-five thousand dollars for the price and value of work then and there done, and materials for the same furnished by plaintiff for defendants at their request; and in the sum of twenty-five thousand dollars for money then and there lent by

the plaintiff to the defendants at their request; and in the sum of twenty-five thousand dollars for money then and there paid by the plaintiff for the use of defendants at their request; and in the sum of twenty-five thousand dollars for money then and there received by the defendants for the use of the plaintiff; and in the sum of twenty-five thousand dollars for money found to be due from the defendants to the plaintiff, on an account then and there stated between them:

And whereas the defendants afterwards, on the 10th day of June, 1858, in consideration of the premises, then and there promised to pay the said several sums of money to the plaintiff on request, yet they have disregarded their promises, and have not paid the several sums of money, nor either of them, nor any part thereof, to
14 plaintiff's damage, $25,000 00, and therefore he sues.

By SMITH, LEE & FISHER,
his Att'ys.

And afterwards, to wit, on the 17th day of May, A. D. 1859, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable Elisha M. Huntington, district judge of the United States, for the district of Indiana, "comes now the plaintiff, by his attorneys, and the defendants are ruled to plead on the next calling of this cause, and day is given."

And afterwards, to wit, on the 20th day of May, A. D. 1859, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge last aforesaid, "come now the parties, by their attorneys, and the plaintiff has leave to amend his declaration herein on file, and day is given."

And afterwards, to wit, on the 23d day of May, A. D. 1859, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, "comes now the plaintiff, by his attorneys, and files his amendment to the declaration, and on his motion
15 the defendants are ruled to plead on the next calling of this case, and the defendants ask for an inspection of the notes, and day is given."

And afterwards, to wit, on the 27th day of May, A. D. 1859, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, "now comes the party plaintiff and James Hughes, one of the defendants, and on his motion the plaintiff is ordered to give the defendants an inspection of the bills of exchange; also to furnish and file a bill of particulars under the common courts; also give defendants an inspection of the currency mentioned in the summons, upon which it is alleged that the action is part founded."

And afterwards, to wit, on the 8th day of June, A. D. 1859, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come now the parties, by their attorneys, and by their agreement this cause is continued, with leave granted to pl'ff to amend his declaration herein on file.

And afterwards, to wit, on the 21st day of November, A. D. 1859, at the circuit court of the United States aforesaid, begun and holden

as aforesaid, before the honorable judge aforesaid, "come the
16 parties, and upon motion of the plaintiff the defendants are ruled to plead on or before to-morrow morning, and day is given."

And afterwards, to wit, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, on the 22d day of November, A. D. 1859, "come the parties and on motion of the defendants the rule for plea heretofore entered is extended until to-morrow, and day is given."

And on the same day the plaintiff, by his said attorneys, files in the clerk's office of said court his certain bill of particulars, in the words and figures following, to wit:

U. S. circuit court.

WILLIAM YOUNG BROWN
vs.
JOSEPH C. TARKINGTON and others.

The said plaintiff files his bill of particulars in this cause, as follows:

Said defendants are indebted to him for bills issued by the Bank of Tekama, Nebraska, as follows:

On bills of the denomination of $1, $10,000; on bills of the denomination of $2, $10,000; on bills of the denomination of $3, $10,000; on bills of the denomination of $5, $10,000; on bills of the
17 denomination of $10, $10,000.

And also for the bills of exchange specially declared on.

LEE & SMITH, *for Pl'ffs.*

And afterwards, to wit, on the 25th day of November, A. D. 1859, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, "come the parties, by counsel, and file an agreement herein, and the defendants file their plea" herein, and day is given the parties.

Plea.

In the circuit court of the U. S. for dist. Ind.

WILLIAM C. TARKINGTON, RANSOM W. AKIN, Joseph M. Howe, Frank M. Akin, Joseph E. Goss, William M. Akin, A. W. Springer, James Hughes, L. M. Hays, and Mitten Hight, impleaded with Campbell and others,
advs.
WILLIAM YOUNG BROWN.

The above-named defendants, by their attorneys, come and defend the wrong and injury when, &c., and say *actio non*, because
18 they say they did not undertake and promise in manner or form, nor did they make the said notes, as the pl'ff in his said

declaration hath alleged against them, and of this the said defendant pray may be inquired of by the country, and plaintiff doth the like.

USHER and others,
for Def'ts.

STATE OF INDIANA, *ss:*

Wm. O. Tarkington, one of the above-named defendants, being duly sworn, doth depose and swear that the foregoing plea by him pleaded is just and true, as he, this deponent, verily believe ; and further says not.

W. C. TARKINGTON.

Subscribed and sworn to this 25th Nov., 1859.

H. BASSETT, *Cl'k*,
Per JOHN H. REA.

Agreement.

WM. C. TARKINGTON *et al.* *advs.* WM. YOUNG BROWN.

It is agreed by the above parties that any and all matters admissible as evidence in this cause for either party, under any state or form of pleading, shall and may be given in evidence under the plea of the general issue filed in this cause.

J. P. USHER, *for D'f'ts.*
C. B. SMITH, *for Pl'ffs.*

19 And afterwards, to wit, on the 5th day of April, A. D. 1860, the plaintiff, by his said attorneys, files in the clerk's office of said court his certain other bill of particulars, in the words and figures following, to wit :

B. B. Barkalow, ass't cash'r Bank of Tekama, in a'c with Wm. Young Brown.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
1858.			1858.		
Feb'y 11	C'y.....	60 00	Feb'y 12	C'y.....	200 00
" 13	..".....	200 00	" 13	..".....	123 00
" "	..".....	100 00	" 19	Coin.....	340 00
" 15	..".....	100 00	" 22	C'y.....	250 00
" 19	..".....	70 00	" 23	..".....	50 00
" 20	..".....	40 00		Balance	380 17
" 22	..".....	26 00			
" 18	..".....	549 17			
" 23	..".....	60 00			
" 24	Scrip	40 00			
" 25	C'y.....	55 00			
" 26	..".....	20 00			
" 27	..".....	22 00			
		1,342 17			1,342 17
March 1	To bal	380 17	March 8	C'y.....	30 00
" "	C'y.....	125 00	" 5	..".....	30 00
" 2	..".....	229 00	" 15	..".....	345 00
" 3	..".....	10 00	" 20	..".....	189 00
" 4	..".....	32 37	" 25	..".....	76 00
" 5	Coin.....	30 00	" 29		4,998 00
" 8	C'y.....	35 00	" "		555 00
20	Carried fo'w'd.	841 54		Carried fo'w'd.	5,923 00
1858.	Bro't fo'w'd..	841 54	1858.	Bro't fo'w'd..	5,923 00
March 9	C'y.....	511 30	March 30	C'y.....	125 00
" 11	..".....	153 00	" 31	".....	100 00
" 12	..".....	60 00	" "	Balance	1,346 61
" 17	..".....	100 00			
" 18	..".....	430 00			
" 20	..".....	97 60			
" 22	..".....	55 00			
" 23	..".....	193 50			
" 25	..".....	252 50			
" 26	..".....	205 20			
" 27	..".....	178 00			
" 29	..".....	3,100 00			
" 30	..".....	1,012 00			
" 31	..".....	305 00			
		7,494 64			7,494 64

B. B. Barkalow, ass't cash'r, &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
April 1	To bal	1,346 64	April 1	By error.....	50 00
" "	C'y.....	172 30	" 5	C'y.....	884 96
" 2	..".....	1,063 00	" 30	Balance	2,632 75
" 3	..".....	157 36			
" 5	..".....	74 50			
" 6	..".....	95 45			
" 7	..".....	215 80			
" 8	..".....	160 00			
" 13	..".....	108 15			
" 19	..".....	211 26			
" 20	..".....	1 25			
" 24	..".....	2 00			
		3,567 71			3,567 71
May 1	To bal	2,632 75	May 26	By c'y	45 00
" 7	C'y.....	170 04	" 31	Balance	2,757 75
		2,802 79			2,802 79
21					
June 1	To bal	2,757 79	July 5	By T'k'ma...	2,757 79

Bridge, Miller, Richardson & Co., on a'c of Bank of Tekama in a'c with Wm. Young Brown.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Amounts.
1858.			1858.		
Feb'y 13	C'ks	25 00	Feb'y 17	Coin	450 00
" 15	C'y.....	11 00	" 22	..".....	40 00
" 16	..".....	210 00	" 18	..".....	130 00
" "	..".....	4 00	" 27	Balance	805 17
" 17	..".....	957 50			
" "	..".....	93 20			
" 20	..".....	37 87			
" 18	..".....	57 60			
" 27	..".....	29 00			
		1,425 17			1,425 17

Bridge, Miller, Richardson & Co., on a'c, &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Amounts.
March 1	Bal.....	805 17	March 29	By coin	100 00
" "	C'y.....	200 00			
" "	..".....	4 00			
" 2	..".....	53 00			
" 3	..".....	6 05			
" 5	..".....	185 10			
" "	..".....	5 00			
" 6	..".....	25 00			
" 8	..".....	12 00			
" 13	..".....	2 75	..		
" 19	..".....	14 00			
" 23	..".....	54 00			
" 25	..".....	3 00			
22	Carried fo'w'd.	1,369 07		Carried fo'w'd.	100 00
1858.	Bro't fo'w'd..	1,369 07	1858.	Bro't fo'w'd..	100 00
March 27	C'y.....	210 00		Balance	1,640 17
" "	..".....	10 00			
" 29	..".....	114 00			
" 30	..".....	37 00			
		1,740 17			1,740 17
April 1	To bal	1,640 17	April 7	By coin	784 15
" 2	C'y.....	500 00	" 12	Coin.....	700 00
" 3	..".....	10 00	" 24	Coin.....	300 00
" 5	..".....	226 50	30	Balance	4,068 08
" 6	..".....	6 00			
" 7	..".....	835 00			
" 8	..".....	44 00			
" 12	..".....	966 00			
" 13	..".....	15 00			
" 14	..".....	196 92			
" 15	..".....	555 00			
" 16	..".....	43 39			
" 17	..".....	325 00			
" 19	..".....	226 75			
" 20	..".....	5 00			
" 23	..".....	51 50			
" 24	..".....	160 00			
" 26	..".....	41 00			
" 29	..".....	5 00			
		5,852 23			5,852 23

Bridge, Miller, Richardson & Co., on a'c, &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Amounts.
May 1	Bal.....	4,068 08	May 11	Coin.....	145 00
" 3	C'y.....	5 00	" 26	R. R.....	185 10
" 6	..".....	30 00	31	Balance	3,792 98
" 11	..".....	200 00			
		4,303 08			4,303 08
23					
1858.			1858.		
June 1	Bal.....	3,792 98	July 5	By T'k'ma...	4,103 08
July 12		104 00			
31	Bal.....	26 10			
		4,103 08			4,103 08

S. L. Campbell, pres'd't Bank of Tekama, in a'c with Wm. Young Brown.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Amounts.
1858.			1858.		
Feb'y 12	C'y.....	5 00	Feb'y 15	C'y.....	100 00
" 16	..".....	100 00	" 25	..".....	6 25
" 19	..".....	13 00	" 27	..".....	375 95
" 20	..".....	318 45			
" 22	..".....	12 00			
" 23	..".....	19 00			
" 24	..".....	9 75			
" 25	..".....	5 00			
		482 20			482 20
March 3	C'y.....	77 00		Balance	138 75
" 11	..".....	60 00			
" 17	..".....	1 75			
		138 75			138 75
April 1	Bal.....	138 75	April 30	Balance	757 25
" 12	C'y.....	130 00			
" 19	..".....	330 00			
" 23	..".....	2 50			
" 28	..".....	156 00			
		757 25			757 25

24 *S. L. Campbell, pres'd't Bank of Tekama, &c.*—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Amounts.
1858.			1858.		
May 1	Bal.....	757 25	May 26	C'y.....	505 00
" 6	C'y.....	65	" 31	Balance	252 90
		757 90			757 90
June 1	To bal	252 90	July 5	By T'k'ma...	757 90
July 5	.." error.....	505 00			
		757 90			757 90

F. M. Akin, cash'r Bank of Tekama, in a'c with William Young Brown.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Amounts.
1858.			1858.		
Feb'y 9	Acc's	3, 399 93	Feb'y 10	C'y.....	102 70
" 10	C'y.....	104 00	" "	..".....	5, 064 58
" 12	..".....	29 00	" 22	..".....	707 00
" 17	..".....	82 00	" 18		73 00
" "	..".....	73 00	" 26		245 62
" 19	..".....	377 00	" 27	Balance	1, 630 95
" 20	..".....	1, 395 50			
" 22	..".....	681 00			
" 24	..".....	71 00			
" 25	..".....	143 00			
" 27	..".....	690 95			
" 13	..".....	206 97			
" 9	..".....	570 00			
		7, 823 85			7, 823 85
March 1	Balance	1, 630 95	March 5	C'y.....	7, 500 00
" "	Coin	500 00	" 9	..".....	32 40
" 5	Coin and c'y.	1, 282 05	" 10	..".....	668 60
	Carried fo'w'd.	3, 413 00		Carried fo'w'd.	8, 201 00
25	Bro't fo'w'd..	3, 413 00		Bro't fo'w'd..	8, 201 00
1858.			1858.		
March 8	Coin	537 50	March 18	C'y.....	318 00
" 9	..".....	6, 000 00	" 19	..".....	1, 390 00
" 13	..".....	10 00	" 25	..".....	16 00

F. M. Akin, cash'r Bank of Tekama, &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amounts.			Accounts.
March 15	Coin	220 00	March 29	C'y	520 00
" 17	..".....	87 00		Balance	2,314 75
" 18	..".....	326 25			
" 22	..".....	2,016 00			
" 31	..".....	150 00			
		12,759 75			12,759 75
April 1	To bal	2,314 75	April 1	C'y	2 00
" "	C'y	763 00	" 6	..".....	458 40
" 2	..".....	50 00	" 30	Balance	4,910 35
" 3	..".....	500 00			
" 5	..".....	1,000 00			
" 6	..".....	128 00			
" 8	..".....	36 50			
" 13	..".....	66 50			
" 14	..".....	103 00			
" 16	..".....	375 00			
" 21	..".....	12 00			
" 30	..".....	18 00			
		5,367 75			5,367 75
May 1	To bal	4,910 35	May 4	C'y	10 00
" 6	C'y	4 00	" 6	..".....	70 00
" 7	..".....	50 00	" 26	..".....	583 20
" 10	..".....	5,000 00	" 31		9,399 15
" 11	..".....	98 00			
		10,062 35			10,062 35
1858.			1858.		
June 1	To bal	9,399 15	July 5	C'y	8,204 32
July 5	C'y	7,618 77		B'k	10,115 60
" "	..".....	1,302 00			
		18,319 92			18,319 92

In addition to the foregoing, the said William Young Brown claims that there is due to him from said Bank of Tekama the sum of twenty-one hundred dollars, for that amount of money loaned by him to the said bank, on the 28th day of April, 1858.

And afterwards this cause was continued from day to day, and from term to term, until the 7th day of Dec., 1860, that being the 17th judicial day of the November term of said court, begun and holden before the honorable Samuel A. Treat, district judge, at Indianapolis, in said district aforesaid, on said day last aforesaid, came the parties by counsel, and the defendants move the court to suppress plaintiff's depositions, and day is given.

And afterwards, to wit, on the 8th day of Dec., A. D. 1860, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge last aforesaid, come the parties by counsel
27 and after arguments upon defendants' motion to suppress plaintiff's depositions, the court takes the same under advisement, and day is given.

And afterwards, to wit, on the 11th day of December, A. D. 1860, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, came the parties by counsel, and the court being sufficiently advised overrules said motion to suppress plaintiff's depositions, and thereupon, on motion of the plaintiff, this cause is continued to the next term of this court.

And afterwards, to wit, on the 20th day of May, A. D. 1861, being the 2d judicial day of the May term of said court for said year, begun and holden before the Hon. Elisha M. Huntington, district judge, "come the parties by counsel, and on motion and by agreement of parties the court order the above cause to be set down for hearing on Monday, June 5th, 1861, and this cause is continued until that time."

And afterwards, to wit, on the 5th day of June, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties by counsel, and
28 the plaintiff moves upon affidavit filed in these words, to wit:

Circuit court U. S., Dist. of Indiana.

WM. YOUNG BROWN
vs.
WM. C. TARKINGTON and others.

The plaintiff moves the court to continue this cause till next term.

And for cause, O. M. Wilson, plaintiff's attorney, states, that I. Allen Campbell, is a material witness for plaintiff, without whose evidence plaintiff cannot safely go to trial, that said Campbell resides in Columbia co., Ohio, and has been ready to attend court at Indianapolis and testify in person in this case, and that said witness has already once so attended court at Indianapolis, but since this cause was set for trial, said Campbell having joined the Ohio volunteer militia has been ordered east, and has, with his regiment, gone into Virginia, within the last few days, by order of government, which going

was unexpected to plaintiff, and there has been no opportunity to take the testimony of said witness. That all necessary diligence was, and has been used, to secure his attendance at this term of court, but without avail, as herein stated; that relator and plaintiff rely
29 solely upon said witness Campbell to prove the execution of the notes in suit as well as the genuineness of over $17,000 of the currency of the Bank of Tekama, upon which plaintiff claims defendants are liable, which notes defendants deny the execution of. Plaintiff also relies on said Campbell to prove the existence of various important papers fixing liability upon defendants, now in defendant's possession. Said Campbell was originally the clerk of defendants in the Bank of Tekama, at Nebraska, in reference to which said notes and papers were executed. Relator states that unless said Campbell shall soon return to Ohio, so as to be present at the next term of this court and testify herein in person, he shall take the evidence of said Campbell by deposition in this case, but if in Ohio, he expects said witness to attend at next term in person in this cause. He further states that this application is made in good faith, not for delay merely, but to obtain the needful time to procure the evidence of said witness, so as to secure a fair trial.

O. M. WILSON.

Subscribed and sworn to in open court, June 5, 1861.

JOHN H. REA, *Clk.*

For a continuance of this cause.

And afterwards, to wit, on the 6th day of June, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before
30 the honorable judge aforesaid, come the parties, by counsel, and the court being sufficiently advised, sustain said motion, and this cause is continued.

And afterwards, to wit, on the 20th day of November, A. D. 1861, being the 3d judicial day of said court, for the November term of said year, begun and holden before the honorable S. H. Treat, district judge, by agreement this cause is set down for hearing on Wednesday of the third week of this term.

And afterwards, to wit, on the 4th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge last aforesaid, come the parties, by counsel, and thereupon comes a jury, to wit: John R. Ross, Edward R. Kircheval, William M. English, David Turner, Francis R. Taitt, Nathaniel Teal, Daniel Sigler, James Blake, Tobias Murphy, Charles Campbell, Thomas Hutton, and William Forsythe, twelve good and lawful men, of the district of Indiana, who being empanelled, tried, and sworn, well and truly to try the issue and true verdict give, according to the evidence, after hearing part of the evidence, by leave of court
31 and agreement of parties, separate until to-morrow morning.

And afterwards, to wit, on the 5th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid,

before the honorable judge aforesaid, come now the parties, by counsel, and thereupon comes the jury aforesaid; and after hearing the evidence, and a portion of the arguments of counsel, by leave of court and agreement of parties separate until to-morrow morning.

And afterwards, to wit, on the 6th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties, by counsel, and thereupon comes the jury aforesaid, who, after hearing the arguments of counsel and receiving the charge of the court, retire to their room to deliberate upon their verdict; after due deliberation, not being able to agree upon their verdict, by agreement of parties and leave of court separate until to-morrow morning, 9 o'clock.

And afterwards, to wit, on the 7th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid,
32 before the honorable judge aforesaid, come the parties, by counsel, and thereupon comes the jury aforesaid, and bring into court the following as their verdict, to wit: We, the jury, find for the plaintiff, and assess his damages at eight thousand four hundred and eighty-nine dollars and seventy-eight cents, ($8,489 78.)

Whereupon the defendants move the court to set aside the verdict and grant a new trial, and day is given the parties.

And afterwards, to wit, on the 9th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, comes now the plaintiff, by his counsel, and it appearing, to the satisfaction of the court, by the return of the marshal, that process herein has been duly served on said defendant, Samuel L. Campbell, more than fifteen days before the first day after the present term of this court, he is three times audibly called and comes not, but makes default.

And afterwards, to wit, on the 20th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties, by counsel, and, after arguments, the court sustain the motion for a new trial;
33 and upon motion of plaintiff, he has leave to amend his declaration, and this cause is continued to the next May term of this court.

And afterwards, to wit, on the 11th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties, by counsel, and the plaintiff moves the court for judgment for costs against the defendants, and day is given.

And afterwards, to wit, on the 15th day of December, A. D. 1861, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties, by counsel, and the court overrule the motion heretofore entered, for judgment for costs against the defendants, and day is given.

And afterwards, to wit, on the 20th day of May, A. D. 1862, at the circuit court aforesaid, begun and holden before the honorable Noah H. Swayne, associate justice of the Supreme Court of the United States, this day comes the plaintiff, and by leave of court,

discontinues and dismisses this suit as to L. M. Hays, defend-
34 ant, leaving said suit still pending as to the other defendants.

Therefore, it is considered and adjudged by the court, that said L. M. Hays, defendant, go hence without day, and recover of said plaintiff his costs herein expended, taxed at $.

And the plaintiff moves the court to suppress the depositions of Samuel L. Campbell, taken since the last term of court, and the court being sufficiently advised, overrules said motion; to which ruling the plaintiff excepts, and this cause is continued to the next term of this court.

And afterwards, to wit, on the 21st day of November, A. D. 1862, that being the 5th judicial day of said court for the November term of said year, begun and holden at Indianapolis, before the honorable judge last aforesaid, upon motion, the plaintiff has leave to take from the files of the court the Tekama bank notes, in evidence on the trial of this cause.

And afterwards this cause was continued from day to day, and from term to term, until the May term of said court, A. D. 1863, to wit, at said court, begun and holden before the honorable David Davis, one of the justices of the Supreme Court of the United
35 States, on the 15th day of May, A. D. 1863, at Indianapolis aforesaid, come the parties, by counsel, and by agreement this cause is set down for hearing on Thursday next, and day is given.

And afterwards, to wit, on the 21st day of May, A. D. 1863, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties, by counsel, and on motion and by leave of court, the deposition of F. M. Akin is withdrawn from the files in this cause, said Akin being present. And thereupon comes a jury, to wit, Marquis L. Smith, John C. Ball, H. Y. Morrison, Isaac Vandeventer, Lewis Jordan, Wm. H. Bennett, John Roache, John Mathis, Thomas M. Adams, John Dunning, Winston P. Noble, and Andrew Curtis, twelve good and lawful men of the district of Indiana, who, being empanelled, tried, and sworn, well and truly to try the issue and a true verdict give, according to the evidence, after hearing a portion of the evidence, by leave of court and agreement of parties, separate until to-morrow morning, 9 o'clock.

36 And afterwards, to wit, on the 22d day of May, A. D. 1863, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties by counsel, and thereupon comes the jury aforesaid, and after hearing the evidence and part of the arguments of counsel, by leave of court and agreement of parties separate until to-morrow morning, 9 o'clock.

And afterwards, to wit, on the 23d day of May, A. D. 1863, at the circuit court aforesaid, begun and holden as aforesaid, before the honorable judge aforesaid, come the parties by counsel, and thereupon comes the jury aforesaid, who, after hearing the concluding arguments of counsel, by agreement of parties and leave of court separate until to-morrow morning, 9 o'clock.

And afterwards, to wit, on the 25th day of May, A. D. 1863, at the circuit court aforesaid, begun and holden as aforesaid, before the

honorable judge aforesaid, on motion of the defendants, it is ordered that the clerk of this court retain in his custody the currency of the Bank of Tekama, used as evidence in this cause, and safely preserve the same, subject to the further order of this court.

37 Circuit court U. S., dist. of Indiana.

WM. Y. BROWN
vs.
WM. C. TARKINGTON.

The plaintiff moves to suppress and exclude the deposition of Sam'l L. Campbell, taken by defendants, and for cause shews—

1st. The certificate of the officer does not show that plaintiff or his counsel were not within one hundred miles, or did not reside within one hundred miles of Carbondale, where this deposition was taken.

2d. The deposition is not properly directed.

3d. The deposition does not appear to have been sealed up by the officer, or to have been retained in his possession till sealed up.

4th. The commission under which the deposition is taken is informal and insufficient.

5th. The deposition is not certified to have been subscribed in the presence of the officer, or to have been reduced to writing in his presence.

6th. The deposition does not appear to have been properly transmitted or opened.

7th. The questions are all leading.

LEE & FISHER, *for Pl'ff.*

INDIANAPOLIS, *Nov.* 10, 1863.

I hereby certify the above to be a true copy of the original
38 on file in my office.

JOHN H. REA, *Cl'k.*

39 And afterwards, to wit, on the same day, come the parties by their attorneys, and thereupon comes the jury aforesaid, who, after hearing the charge of the court, and due deliberation had, return into court the following as their verdict, to wit: "We, the jury, find for the defendants." Thereupon it is considered by the court that said defendants go hence without day, and recover of said plaintiff their costs and charges herein laid out and expended, taxed to $.

And afterwards, to wit, on the same day, the following was entered of record, viz: Be it remembered that a "bill of exceptions," taken on the trial of this cause by the plaintiff, to the charge and rulings of the court herein, was this day signed, sealed, and ordered to be recorded, and which is in these words, to wit:

Bill of exceptions.

Circuit court U. S., district of Indiana.

WILLIAM YOUNG BROWN
vs.
WILLIAM C. TARKINGTON *et al.*

Be it remembered, that on the trial of this cause the following evidence was given on the part of the plaintiff, to wit:

The following articles of association produced by the defendant's counsel, on notice hereto attached, marked "A."

To the reading of which, in evidence, defendants objected, and by counsel excepted.

And the plaintiff, William Young Brown, being offered and sworn as a witness in said cause, testified as follows:

That he was engaged in business, a banker and real estate broker, in Omaha, in the Territory of Nebraska, in the years 1857 and 1858. The signatures of the following persons are known to him, and the same appended to the articles of association read in evidence are genuine, viz: B. B. Barkalow, William H. Baird, Samuel L. Campbell, and Milton Hight. D. S. Barkalow was one of the acting parties in the bank; his signature was made by his brother, B. B. Barkalow, and afterwards admitted by him. J. E. Goss admitted his signature to witness, but said he had received no benefit from it.

William D. Alexander's signature is genuine; the signature of L. M. Hays was written by W. D. Alexander; R. W. Akin's signature is genuine; has seen the signature of J. M. Howe once or twice. Howe told him he had lost two thousand dollars by the bank; has seen James Hughes in Washington; saw him write his name once on a hotel register in Cincinnati, having followed him up from an omnibus to the hotel office; W. C. Tarkington's signature is genuine, and also Francis M. Akin's; William M. Akin recently admitted his signature to witness, and said he had lost a thousand dollars by the bank. A. W. Springer recently admitted to witness that his name had been signed by William M. Akin, and afterwards approved by him, and he had paid a thousand dollars on his subscription. Witness saw the articles of association here exhibited in Omaha, in the bank, about the 7th or 8th of February, 1858, in possession of Samuel L. Campbell, the president of the bank. The business house of witness was just across the street from the banking-house of the Bank of Tekama. S. L. Campbell was the president of the bank and the chief manager; Francis M. Akin was cashier, and B. B. Barkalow assistant cashier, and these three were the active managers of the bank. The consideration of the notes sued on was money advanced from time to time to the Bank of Tekama, as shown by the bill of particulars on file with the declaration, for the purpose of redeeming their bills and outstanding indebtedness. The note dated in April, 1858, was for twenty-one hundred

dollars in Ohio currency, advanced to S. L. Campbell, presi-
42 dent of the bank, at Saint Louis, to use in the Citizens' Saving Institution in redeeming the notes of the Bank of Tekama. The signatures of S. L. Campbell to the three notes sued on, dated June 9th, 1858, are genuine.

The said three notes were then put in evidence by the plaintiff, (here attached marked "B," "C," and "D.")

The plaintiff's counsel then stated that he offered in evidence a deposition of his own, to prove the loss and the tenor of the note sued on of the date of April 28th, 1858, and put in evidence the following statement, (hereto attached marked "E.")

William Young Brown, resuming as a witness, a printed circular was shown him, and he deposed that the same was issued and circulated by Samuel L. Campbell, acting as president of the Bank of Tekama, and the said circular was then put in evidence by the plaintiff, (hereto attached marked "F.")

The said William Young Brown further testified that 17,500 dollars in bank notes of the Bank of Tekama was delivered to him, part on the 7th day of June, 1858, and part on the 9th day of June, 1858, at the office of the Citizens' Saving Institution, in Saint Louis,
43 by Samuel L. Campbell, as collateral security to secure the payment of said promissory notes, and that a further sum of two hundred and twenty-seven dollars in the bank notes of said bank, and bought up by him at Omaha a short time before the suspension of said bank, and is now held by said witness, and he states that this amount, in addition to the sums named on the face of the notes sued on, with their interest, is due to him, and claimed in this suit. Plaintiff then put in evidence (defendant's counsel excepting) several packages of bank notes not counted, but claimed by plaintiff's counsel to amount to $17,727 00, of the denominations of one, two and five dollars, each note being, except as to denominations, of the tenor following, (specimen of the hereto attached marked "G," "H," and "I."

On cross-examination, said William Young Brown deposed as follows: That he went to Omaha to live in the summer of 1856; he became acquainted with B. B. Barkalow in the spring of 1857, and with Samuel L. Campbell in the summer of the same year. Barkalow was president of the Bank of Nemaha Valley at Brownsville, in
44 Nebraska Territory, seventy miles from Omaha, and was doing business at Omaha, using the currency of his bank there; Campbell had no fixed business, and had just returned from an exploring expedition when witness became acquainted with him. Witness commenced banking at Omaha in the spring of 1857; knew of the charter of the Bank of Tekama by the Territorial legislature, and first knew that Barkalow and Campbell held the charter when they came out with Francis M. Akin to start the bank in August, 1857. The Bank of Tekama began doing business about the first of September, 1857. Witness purchased the exchange office of the Bank of Tekama at Omaha, its good will, &c., early in February, 1858, viz., on the ninth day of Feb'y, 1858. He took possession

under said purchase on the same day. Campbell stayed there some time, and then went to Saint Louis; Campbell said he had bought the Citizens' Saving Institution at Saint Louis, as president of the Bank of Tekama; Campbell's brother, Robert H. Campbell, was president of the Citizens' Saving Institution after said purchase, and Samuel L. Campbell was cashier of the same. Robert Campbell had nothing to do with the Bank of Tekama, and was not interested in it.

45 Witness was twice in the Citizens' Saving Institution at Saint Louis, and corresponded with Samuel L. Campbell there regularly; does not know anything concerning the firm of B. B. Barkalow & Co., except what was stated to him by B. B. Barkalow. He had no dealings with that firm that he remembers. Barkalow stayed in the office at Omaha some time after witness bought it; left there, he thinks, some time in April, 1858. Witness at the time was himself absent in the east. Mr. Briggs and John A. Campbell were acting as clerks for witness, and had charge of his business at Omaha during his absence. John A. Campbell had been the teller of the Bank of Tekama at Omaha up to the time he, witness, bought it out, and then continued as clerk to witness, but had no official connexion with the bank after that period, except that he attended to its old business; began acting as clerk to witness when he took possession in February, 1858. The sign of the Bank of Tekama remained over the door as before, but the witness bought up its currency at reasonable rates to stop it from going down to the office at Saint Louis, in pursuance of an arrangement he had made with Samuel L. Campbell, as president, for that purpose. The books and papers of the bank were left for a time there with plaintiff; there were some of the books

46 included in his purchase, and there was one *till* left there containg papers belonging to the bank, supposed by witness not to be considered of much value by the bank, and among these were the assignments of the charter, by virtue of which Campbell and Francis M. Akin claimed to hold it. The three promissory notes sued on, dated June 9th, 1858, were given to secure the balance due on three open accounts, contained in the bill of particulars filed with the declaration, one against B. B. Barkalow, assistant cashier, one against F. M. Akin, cashier, and one against S. L. Campbell, president, and said balance was justly due said plaintiff from said Bank of Tekama, and the items in said accounts were correct and just as charged therein. The settlement was made at St. Louis, on the 7th, 8th, and 9th of June. Milton Height was there at the time, but took no part in the settlement. B. B. Barkalow was in and out while it was going on; it took place in the office of the Citizens' Saving Institution. Height had his stock entered on the bank books as transferred, in the presence of witness, during the time, and had it dated back on the books more than six months. All the checks charged in

47 the bill of particulars were presented to the president of the bank, Campbell, and surrendered up to him when the settlement was make. Francis M. Akin was in the Territory once during the time covered by the account against him. It is usual to keep the account against a bank against its cashier, but witness kept

three several accounts, because he had been requested by Samuel L. Campbell to make his accounts show saparately his dealings with said Campbell, Benjamin B. Barkalow, and Francis M. Akin. Francis M. Akin left the Territory of Nebraska in Nov., 1857; was not there when witness bought out the Omaha office from Campbell, and did not return until May, 1858. All the accounts were for money paid out for the Bank of Tekama, in such currency as was in use in the Territory.

The ballance due on Barkalow's account is	$2,759 79
On Campbell's, as president	757 90
On Akin's, cash'r, (for Hotel Co.)	4,103 08
All carried to account of F. M. Akin, as cashier	10,115 60

Received the currency here produced in court at the time of settlement, except $227, which had on hand when the bank stopped payment, on the 26th of May, 1858. In the bundles so produced in court it is all so mixed up together that witness cannot seperate the 227 dollars from the rest. Got this sum shortly before the
48 bank stopped payment, say within a week. Witness was only incidentally concerned in buying a Virginia bank charter, and did not buy one in connexion with Barkalow and Campbell, nor in partnership with either of them. Witness bought such a charter, paid $1,000 down, and drew on Barkalow for $500; expected a friend to go in with him, who did not come on as agreed; and after organization, witness transferred. The draft drawn on Barkalow was payable on its face, in currency of the Bank of Tekama, which witness represented to be current in Saint Louis. Barkalow was the assistant cashier, and the active man of the bank at Omaha after Akin left. Campbell showed witness the stock book at the time the Tekama office was sold to him, with the names thereon subscribed, and told him the stockholders would pay in $15,000 to use in opening and starting a branch at Saint Louis. Campbell did not inform him that any of said stockholders had transferred. Went down last week to see A. W. Springer and William M. Akin, to see if Springer was connected with the bank.

The plaintiff then put in evidence the deposition of Benjamin
49 B. Barkalow, (hereto attached, marked "J.")

Also, the deposition of Lyman Richardson, (hereto attached, marked "K.")

Also, the deposition of George L. Miller, (hereto attached, marked "L.")

The plaintiff then produced and examined, as a witness, Lazarus Noble, who deposed as follows, to wit:

Was at Council Bluffs and Omaha in 1857; in Omaha from May to November, 1857, dealing in land warrants &c. The officers of the Bank of Tekama acting were S. L. Campbell, president, Francis M. Akin, cashier, and B. B. Barkalow, who acted as assistant cashier. Bills of exchange were signed by Campbell and Akin. The currency here shown to him is genuine as to impression and signatures; does not know whether it was signed before the bank stopped or not; saw the circular shown him about the time the bank started. He

had dealings with B. B. Barkalow, as assistant cashier. There was in said bank impressions for about $90,000 in currency. Many of the bundles of bank notes here shown him are new, the paper being in original packages which have never been opened or used.

50 The defendants then put in evidence the deposition of Samuel L. Campbell, (hereto attached, marked "M.")

The defendants then put in evidence the following written and sealed contract and exhibits, (hereto attached, marked "N.")

The defendants then put in evidence a certified copy of a charter by the Territorial legislature of Nebraska, (hereto attached marked "O".)

The defendant then put in evidence the following assignments, produced in court by the plaintiff on the request of the defendants, notice being waived, (hereto attached marked "P.")

Francis M. Akin being then produced and sworn, as a witness on the part of the defendants, gave evidence as follows:

The assignments of the charter read in evidence are the only assignments thereof, and are the ones under which witness and S. L. Campbell held the same. Said witness further deposed that there never was any meeting of the board of directors named in the articles of association of the Bank of Tekama, nor other or further organization thereof, than is contained in said articles, nor was there any other appointment of officers for said bank, than the appointments pro tempore, made in said articles.

51 That B. B. Barkalow was not appointed as assistant cashier, and had no authority to act as such; that when witness left the Territory of Nebraska, in Nov., 1857, he expected said Barkalow, who was then absent, to come to the office of the bank in Omaha, and stay there in his absence, and left instructions for him in writing; that at the time he left John A. Campbell, the teller, remained in the bank, and witness left verbal instructions with him to put out no more currency of the bank. Witness went to Nebraska in May or June, 1857, returned to Indiana, and went back to the Territory in the month of August.

Became acquainted with Campbell for the first time in the Territory. Campbell suggested to him the purchase of the charter of the Bank of Tekama, and introduced Barkalow, then a resident of the Territory, to him. Barkalow also recommended the purchase of said charter, and it was bought for ten thousand dollars by Campbell, and witness paid six thousand dollars. It was agreed that Barkalow should have an interest, and Barkalow and Campbell arranged for the remaining four thousand dollars of the purchase money after

52 the bank was started. Witness took some money to the Territory when he went there, to go into business with. Arrangements were then made by witness, Campbell, and Barkalow for organizing a bank under said charter. Witness drew the articles of association here given in evidence, and Campbell, Barkalow, and ten others entered their subscriptions in the Territory. Witness did not sign at that time, but took the articles of association and a copy of the charter to Indiana, and sent them to his father, R. M. Akin, at Bloomington, Indiana. R. W. Akin took and procured others to take

the residue of the stock subscribed in Indiana; witness signed among others.

Witness returned to Nebraska to start the bank in August, 1857, and remained there until the 24th day of November, 1857, when he left the Territory. Left John A. Campbell, the teller, in the Omaha office. Said Campbell afterwards became the clerk of the plaintiff. The witness while he acted as cashier, had retired all the notes of said bank in circulation in the Territory and the Omaha region, except about thirteen hundred dollars, and left orders with John A. Campbell to put out no more. There had been a great panic
53 in the Territory in the fall of 1857, which was very severe on the banks, and witness deemed it prudent to keep down the circulation. Returned to Nebraska in May, 1858. Witness had no connexion with the Saint Louis concern. S. L. Campbell and B. B. Barkalow composed the firm of B. B. Barkalow & Co. at Saint Louis. They professed to be dealers in produce. Witness remained in Nebraska about one week in May, 1858, and returned to Indiana by way of Saint Louis. John D. Briggs was the clerk of Wm. Young Brown in banking business in Nebraska, and the letter shown dated April 17, 1858, is in the handwriting of said Briggs. The defendants then read in evidence said letter thereto attached, marked "Q."

Francis M. Akin further testified as follows: There was a firm of Merrit, Campbell & Co., at Saint Louis, composed of R. H. Campbell, the presi't, of the Citizens' Saving Institution, and brother of Samuel L. Campbell, Isaac Merrit, a Mr. Kidd, and perhaps another Merrit. They were produce commission merchants, and B. B. Barkalow & Co. made their sales through them when they made any.

The defendants then put in evidence a letter from John D. Briggs to S. L. Campbell, dated April 27, 1858, said letter being
54 proved to be in the handwriting of said Briggs by Francis M. Akin, (hereto attached marked "R.")

Also a letter from said to William Young Brown, dated May 3d, 1858, proof of the handwriting being made by said Akin, (hereto attached, marked "S.")

The defendants then read in evidence a letter from John A. Campbell to Barkalow and Campbell, dated April 15, 1858, proof of the handwriting having been made, (hereto attached, marked "T.")

The defendants then read in evidence a letter from William Young Brown to B. B. Barkalow, dated May 13, 1858, proper proof of the handwriting having been made, (hereto attached, marked "U.")

And a letter of William Young Brown's to Samuel L. Campbell, proper proof of the handwriting having been made, dated May 19, 1858, (hereto attached, and marked "V.")

And a letter of William Young Brown's to B. B. Barkalow, dated April 16, 1858, proper proof of handwriting having been made, (hereto attached, marked "W.")

And a letter of Sam'l L. Campbell's, directed to B. B. B., dated Saint Louis, and indorsed S. L. Campbell, proper proof of the handwriting of Samuel L. Campbell having been made, and it having been proved
55 that the indorsement thereon was in the handwriting of John

A. Campbell, clerk to William Young Brown, (hereto attached, marked "X.")

Francis M. Akin resuming, gave the following evidence: The printed circular given in evidence, and now shown to witness, was gotten up in St. Louis by Samuel L. Campbell, and was put in circulation by him in the month of July preceding the starting of the Bank of Tekama. Witness further states that he was in Indiana during all the time covered by the account against Francis M. Akin, cashier, contained in the plaintiff's bill of particulars, and had no such transaction with the plaintiff as therein set forth, there or at any other time, and did not draw a single check of those therein charged against him.

On cross-examination, said Francis M. Akin testified as follows: Witness, as cashier, signed all the bank note impressions of the Bank of Tekama in sheets, amounting to about $90,000, about the time the bank started; but it remained in blank unsigned by Campbell, and in sheets, up to the time he left the Territory, except about $40,000.

He did not consent to the signing by Campbell or issuing any
56 more than the $40,000 at any time, nor did he concur therein.

In August, 1857, Campbell signed the said $40,000, and took thirty-odd thousand dollars of it to Indiana, and deposited it in the Bank of Gosport, in Gosport, Indiana, and the Bloomington Bank, at Bloomington, Indiana; $18,909 was left in the Bank of Gosport, and $14,409 was left in the Bloomington Bank. The residue of the $40,000 was put out in Nebraska, in September and October, 1857, principally in September. Tekama was a place of redemption only; Milton Hight, the teller, was there, and kept the office at that place; said Hight remained there until May or June, 1858; has seen the currency sent to Bloomington Bank lying in packages there, and understands they caused the most of it to be burned. Was in Saint Louis last, to see Campbell & Barkalow, in May or April, 1858; R. H. Campbell was then there; he seemed to be running a bank. The St. Louis office, a Citizens' Saving Institution was a kind of a depot to use Tekama money, to put it out to buy produce with, and keep it as good as Illinois money; was at Saint Louis three or four days. The

Saint Louis parties stayed in, and transacted their business in
57 the office of the Citizens' Saving Institution. Witness never authorized the Saint Louis concern to put out any Tekama currency, and never authorized any one to put out any of the sheets left by him at Omaha, signed by him but not by Campbell.

Ransom W. Akin, a witness sworn on the part of the defendants, testified as follows: In the latter part of Dec., 1857, or early in January, 1858, Samuel L. Campbell applied to witness to buy out the stock of himself, William C. Tarkington and James Hughes, in the Bank of Tekama; the negotiations resulted in a sale of the same to him. Nothing had been paid in on said stock, and it was therefore agreed to transfer to Campbell, upon his executing a guarantee to assume the payment of all liabilities on the subscription. This was the case as to stock of witness, who acted for himself and James Hughes, and as to the stock of Tarkington, who acted for himself. Joseph M.

Howe had paid two thousand dollars on his stock, and Campbell did not at that time succeed in making a satisfactory arrangement for his. He purchased it afterwards, after the agreement was made. Campbell hurried off on the cars, and it was stipulated that the papers should be executed and delivered through the mail. On the
58 second day of July, 1858, witness executed the necessary transfers in writing for himself and for Hughes, and mailed them to Campbell, at Martinsville. Tarkington also made a transfer at the same time, and sent it also. The following guarantees in writing were received from Campbell by mail, and the signature is his genuine signature:

The defendants gave in evidence the said written guarantees, hereto attached, marked "Y," "Z," and "No. 1."

In April or May, 1858, being at Saint Louis, witness caused Campbell to make entries on the books of the bank, to show that the transfers had been made, but he did not date the entries back to the time they were actually made, but dated the entry on the books of the date they were entered, and gave as a reason why he had not noted the transfers on the books before, that the books had not been in his possession. Howe sold to Campbell, and his transfer was entered on the books at about the time it was made. Howe was to receive of Campbell for his stock $2,000, in notes of the Bank of Tekama, and Campbell directed witness, who was president of the Bloomington Bank, to hold that amount of the Tekama money there for Howe's benefit, and subject to his order, which he did; Hughes subscribed at the request of witness.
59 When requested, he said he could not take any stock, as it must be paid in coin, and he had not the money. Witness offered to furnish the money through the Bloomington Bank, or the Bank of Salem, and upon that understanding Hughes subscribed. This was in the summer of 1857; and soon after, the financial panic and distress of 1857 set in, which caused many banks to suspend, and created a great stringency in the money market generally, and witness went to Hughes and told him that in consequence of this state of affairs it would be difficult for him, witness, to carry out his promise to furnish coin to pay in the stock subscribed by Hughes, and thereupon said Hughes said it made no difference; that the matter might drop where it was. The stock subscription then was in possession of witness, and had not been delivered over, and the bank had not been started. Said Hughes had no further connexion with the transactions of said bank, to the knowledge of witness, up to the time of the transfer made of his stock by witness. This was done in the absence of Hughes, who ratified it soon afterwards, on being informed of it, and who had told said witness to do as he pleased with his subscription. Witness lived in Bloomington, Indiana, in 1857;
60 lives now in Carlisle, Indiana; has lived in said State for more than thirty years; remembers the articles of association; they were entered and subscribed in a small book, the one in evidence in this cause, it is the original; said book was in his possession at Bloomington, and was sent to him together with a copy of the

law of Nebraska, chartering the Bank of Tekama, by F. M. Akin; thinks the copy here shown is the one; said copy was exhibited to some of the stock subscribers, together with the articles of association which they subscribed. Francis M. Akin went to Nebraska in the spring of 1857. Witness never was in Nebraska, and never participated in the affairs of the Bank of Tekama, beyond subscribing for stock therein. None of the Indiana stockholders participated in the management or business of the Bank of Tekama, except William D. Alexander, Francis M. Akin, and Milton Hight. Akin and Hight were the only ones who went to the Territory. Witness was president of the Bloomington Bank, and is now one of the bank directors for the State of Indiana, elected by the State legislature. There was no further organization of the Bank of Tekama, or appointment of officers for it, than it contained in the articles of association themselves. Sam'l L. Campbell left about fourteen
61 thousand dollars of the notes of the Bank of Tekama with the Bloomington Bank in the summer of 1857, or shortly after the Bank of Tekama was started. It remained in the Bloomington Bank, for some time in the original packages, and none of it was put in circulation. Of the amount so left with the Bloomington Bank, the witness and the cashier of that bank caused between eight and ten thousand dollars of it to be burned. Three thousand had been sent out to a son of witness in Minnesota, and was not there when the burning took place, but was afterwards returned, and is now in the Bloomington Bank, having never been put in circulation. Campbell directed witness to hold two thousand dollars of it subject to the order of Joseph M. Howe, to pay for his stock transferred to Campbell, and that amount is there, subject to said Howe'sorder. This accounts for all the Tekama money left in the Bloomington Bank by Sam'l L. Campbell.

Milton Hight, being called and sworn as a witness for the defendants, testified as follows :

That his signature to the articles of association was genuine. The stock subscribed for by him was taken for his brother, an
62 officer in the regular army. His brother, Thomas Hight, left with him something over a thousand dollars to invest for him, and he put it into the Bank of Tekama, and paid in a thousand dollars on said subscription, when a certificate of stock was issued to him; as it belonged to his brother, he assigned it to him, so that the stock would be in the name of the real owner. This was in the fall of 1857, soon after the bank started. Witness has held no stock since. He was the teller of the Bank of Tekama, and had charge of the redemption office at Tekama, in Burt county, Nebraska Territory. Witness went to Tekama about the first of September, 1857. All the business of *of* the bank, except redeeming in coin, was done at Omaha City; redeeming in coin was done at Tekama; witness kept the office there for that purpose. William Young Brown, the plaintiff, bought out the Omaha office and business in the winter 1857 and 8; and after Brown's purchase, matters went on just as they had before; when witness needed coin, he went to Brown, as

he had previously been in the habit of sending to Campbell and Akin. Campbell & Barkalow went to Saint Louis after the
63 sale of the Omaha office. Witness went to Saint Louis in June, 1858, and there had a settlement with Campbell, in the office of the Citizens' Saving Institution. Brown, the pl'ff, was there at the time, and was present in said office at the time of the settlement. Witness arrived in St. Louis on the evening of the seventh of June, 1858; on the morning of the 8th of June, he went into the office of the Citizens' Saving Institution. Brown, the plaintiff, and Campbell were there together; and Campbell was signing up blank notes of the Bank of Tekama, after notes here in evidence. But a few have ever been used; the most of them are entirely new, and in the original packages. B. B. Barkalow was not in the room when witness first went in, but came in soon after, and plucked witness, and took him out, saying that these men, Brown and Campbell, were making a settlement. Witness went out with Barkalow, and they walked toward the river; witness had never seen either Campbell or Brown before that day. Witness caused Campbell to enter a note on the books of the bank, showing the transfer made by him to his brother, and had him date it back to the time it actually took place,
64 and thereupon surrendered to said Campbell the stock certificate issued to him, with the assignment to his brother endorsed on the back in November, 1857. Brown and Campbell had very little conversation with each other while witness was in; Campbell quit signing notes when witness entered. Of the Tekama currency sent to the Bloomington Bank, about $10,000 was burned by the officers of the bank; the rest is now lying in said bank in the original packages.

On cross-examination, said witness deposed and said as follows:

He left Nebraska Territory about the first of June. The sheriff had charge of the Tekama office then; the bank had stopped about the 26th of May. The distance from Omaha to Tekama is about forty miles. After the panic, the notes of the bank came in pretty freely; there was not much of a run before. Witness redeemed from fifteen to twenty thousand dollars in coin, while he was there; got some coin from Brown. John A. Campbell, brought some up; all the coin received by witness was paid out in redeeming Tekama bank notes; B. B. Barkalow, S. L. Campbell, and F. M. Akin, and
65 witness were the only stockholders who had any actual participation in the business of the bank; the rest were not in the Territory, except, perhaps, D. S. Barkalow, who may have been there for a short time. The signature of J. M. Hays to the articles of association is genuine. Does not know the signature of S. G. Goss.

The defendant then put in as evidence an agreement between B. B. Barkalow and William M. Akin, dated April 24th, 1858, (hereto attached, marked "No. 2.")

The defendant then proved and put in evidence an agreement signed and sealed by B. B. Barkalow, with A. W. Springer, of date April 24, 1858, (hereto attached, marked "No. 3.")

And the defendant proved and put in evidence an agreement signed and sealed by B. B. Barkalow, with F. M. Akin, dated April 24th, 1858, (hereto attached, marked "No. 4.")

Francis M. Akin, being called, deposes that the three agreements last above mentioned, and dated April 24, 1858, were made after that date some weeks, and dated back.

66 The defendant then proved and put in evidence a receipt of William Young Brown, dated June 7th, 1858, for six thousand dollars, as collateral security, (hereto attached, marked "No. 5.")

The defendants also proved and put in evidence a receipt for collaterals of Brown, dated June 9th, 1858, (hereto attached, marked "No. 6.")

The defendant proved indorsements on face of a note to be in the writing of plaintiff, and put in evidence, with the signatures cut off, and the entries on its face, (hereto attached, marked "No. 7.")

Plaintiff, as rebutting testimony, proved and put in evidence a letter of May 6, 1858, from S. L. Campbell to Briggs, (hereto attached, marked "8.")

Plaintiff also put in evidence a letter of May 8, 1858, from Campbell to Briggs, (hereto attached, marked "No. 9.")

Plaintiff then put in evidence a letter of May 11th, 1858, to Brown from Campbell, (hereto attached, marked "No. 10.")

Also, the letter of May 24th, 1858, inside, outside marked May 27th, (hereto attached, marked "No. 11.")

William Young Brown, the plaintiff, then testified as follows:

67 He thinks the indorsement on the letter of Samuel L. Campbell is not in the handwriting of John A. Campbell, and knows nothing of said letter, and did not carry the currency mentioned in it; he has no recollection of ever having seen the letter of Briggs of May 3d, 1858, addressed to witness; said letter is in the handwriting of said Briggs, and at the date of its writing Briggs was clerk to witness, and had charge of his business, but witness does not permit his clerks to swear, or to use the kind of language in that letter; that he was absent from home at the time of Briggs's letter of April 27th, 1858; was also absent at time of the letter of John A. Campbell, dated April 15th, 1858; said Campbell was then in his employ; the $2,000 mentioned in the letter of S. L. Campbell, of May 8, 1858, was to make good protested drafts, for money advanced to the bank of Tekama for redemption of its bills; he never carried any money to Omaha except said $2,000 and did not circulate Tekama money except when it was current; the cancelled note was given on settlement, and then taken up by giving smaller notes in its place, one of which, for one thousand dollars, was paid; witness had no connection with Merrit, Campbell & Co., nor any with the Citizens' Saving Institution, except through the Bank of Tekama.

68 The drafts drawn by witness on the Citizens' Saving Institution have, some of them, been taken up; could not take up the rest; had no funds.

And the foregoing was all the evidence given in said cause.

And thereupon, the plaintiff requested the court to charge the jury in the words and figures contained in the written request of plaintiff, hereto appended and made part of this bill, marked "K." Whereupon, the court charged the jury in the words and figures contained in the written charge of the court, hereto appended and made a part of this bill, marked "L." To which charge of the court as given, and its refusal to charge as requested, particularly as to the charge and ruling of the court that if plaintiff had aided in carrying on said bank, and circulated its currency, and aided in obtaining credit therefor, he could not recover; the plaintiff excepted, and prayed that his bill of exceptions might be signed,
69 sealed, and ordered to be recorded, which is done and ordered accordingly.

(Signed) DAVID DAVIS. [SEAL.]

"A."

Articles of association, with signatures attached, referred to in bill of exceptions, marked "A."

Subscription to the capital stock of the Bank of Tekama.

Articles of association.

Be it known that we, who have hereunto set our hands and seals, do hereby associate ourselves for the purpose of establishing a bank, and for the purpose of conducting the business of banking according to the laws of the Territory of Nebraska relating to banks and banking associations; and we do covenant and agree for ourselves, our executors, administrators and assigns, respectively, to perform and conform to the obligations and regulations in and consequent to the following articles, which we declare to be our articles of association:

Art. 1. The name of this association shall be the Bank of Tekama, and it shall be located at some village, town, or city in Burt county,
70 Nebraska Territory, and the general business of said bank shall be transacted at said village, town, or city, and at an exchange office, which shall be located at Omaha, Nebraska Territory.

Art. 2. The capital stock of this our association shall be three hundred thousand dollars, ($300,000,) divided into three thousand shares of one hundred dollars each.

Art. 3. The said capital stock shall be paid in in coin, or its equivalent, and shall be due and payable in instalments, as follows: First instalment, which shall be ten dollars per share, shall be due and payable on the first day of September, A. D. 1857. Second instalment shall be due and payable on or before the first day of December, A. D. 1857, and shall also be ten dollars per share. Third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth instalments, which shall be ten dollars per share each, shall be due and payable at such times as a resolution of the board of directors, chosen for the management of the business of the association, may direct.

Art. 4. The powers conferred on this and like associations
71 by the laws of the Territory, and all its business operations

and transactions, shall be exercised, managed, directed, and controlled by a board of directors, seven in number, of whom a majority shall constitute a quorum. The said board of directors shall fix and determine the salaries or compensation for services to be allowed and paid to the president, vice-president, the cashier, and the clerks employed by this association. And the said board of directors may make and adopt such by-laws and regulations for the internal management of the affairs of the bank as they may deem expedient and propor, provided such by-laws be not at variance with one or more of these articles of association.

Art. 5. No person shall be eligible for directorship in this association who is not a citizen of the United States, and who does not own and hold in his own name at least ten shares of the capital stock of this association.

Art. 6. The following named parties are hereby nominated and chosen for directors, and shall constitute the first board of directors, and shall continue until their successors be elected: B. B. Barkalow, Samuel L. Campbell, Wm. H. Baird, F. M. Akin, R. W. Akin,
72 W. C. Tarkington, and W. D. Alexander. And we appoint for temporary organization, Samuel L. Campbell, president pro-tempore; W. C. Tarkington, vice-president pro tempore, and F. M. Akin, cashier pro tempore.

Art. 7. There shall be an annual election for directors of this association, which may be held at the office of the bank, in Burt county, Nebraska Territory, or at the exchange office, at Omaha, Nebraska Territory, on the first Monday of July of each year, and notices of said election shall be given to the stockholders four weeks preceding the day of election; and in voting for directors, each stockholder shall be entitled to one vote for each share of stock he may hold in this association.

Art. 8. The directors, at their first meeting, or as soon thereafter as practicable, shall elect, by ballot, one of their number to the office of president, also one to the office of vice-president. The president so elected shall be, and is hereby, acknowledged to be the official head of this association; shall, when present, preside over all meetings of the board of directors; shall give the casting vote in case of tie
73 on any question that may arise before the board of directors relating to the internal affairs of the bank, or other matters connected therewith. And he is authorized and empowered, under direction, or with the knowledge and consent of said board of directors, to receive or make conveyances of all such real estate as the association may hold; to sell and transfer stock bonds and mortgaged and other property or evidences of debt held as security or belonging to the association; to receive dividends or incomes arising from the same; to sign all notes intended for circulation of this association; to sue or prosecute or defend for value claimed by or of this association. It shall be the duty of the vice-president of this association to act in the capacity of the president elect during the absence of said president, or when said president shall, by sickness or other causes, be prevented from discharging his aforesaid duties.

Art. 9. In case of absence of both the president and vice-president at any meetings of the board of directors, the said board may elect a president pro tem., who shall have power to perform the duties of said president and vice-president elect.

74 Art. 10. The directors shall appoint a person to the office of cashier, whose duty it shall be to keep the minutes of the board of directors, to countersign and register all the notes intended for circulation, to direct the clerks and other employés of the bank, to examine the teller's account, and to give directions and carry into effect the general business of the bank, and to report to the directors at their meetings the state and condition of the bank.

Art. 11. The cashier, the teller, and all other employés of this bank, shall, before entering upon the discharge of their several duties, give bond, with sureties satisfactory to a majority of the board of directors, for the faithful performance of the various trusts reposed in them.

Art. 12. The board of directors shall have power, with the concurrence of two-thirds of the whole number of directors, to remove any officer of this association who shall be found to be incompetent to discharge the duties devolving upon him, or who shall be negligent or remiss of duty, or for other causes.

75 Art. 13. The cashier, for the time being, shall give to the subscribers of the capital stock of this association receipts for the instalments paid thereon, and no certificate of stock shall be issued to a subscriber until the total amount of his subscription shall have been paid in, unless otherwise ordered by the board of directors.

Art. 14. All certificates of stock in this association shall be signed by the cashier and president, and countersigned by one of the directors appointed by the board, and all transfers of stock or shares of stock shall carry with them the rights, interests, obligations, and conditions of, or arising from, these articles of association.

Art. 15. Each of the subscribers to the capital stock of this association holds him or herself bound by this association for the full amount of such number of shares of its capital stock as are designated in line with his or her respective signatures, and hereby agree to make punctual payments of all instalments on said shares as the same may become due by these articles of association, or by resolution of the board of directors.

76 Art. 16. On all instalments toward the capital stock of this association which may not be paid when due, there shall be charged interest for the time such instalments are withheld, at the rate of ten per cent. per month for the term of three months, after which time, if not paid, the board of directors shall have power to transfer, sell, or forfeit, for the benefit of the association, any share or shares thus withheld, and to erase the name representing such share or shares of stock from the books of the association.

Art. 17. The directors shall authorize the payment of all the expenses of this association out of the moneys or funds thereof, and may make and pay to the stockholders such semi-annual dividends out of the nett profits of the bank as to them may appear just and proper,

provided such stockholders or subscribers to the capital stock of this association shall have paid his instalments upon his subscribed stock, as such instalments have become due and payable; otherwise it shall not be paid to him, but shall be placed to the credit of such stockholder or subscriber upon the books of the association, or a sufficient amount of same to cover balance due by said stockholder or
77 subscriber on such instalment, and remainder may be paid to him at the option of the board of directors.

Art. 18. It is further hereby agreed, that the amount of funds expended by F. M. Akin, Samuel L. Campbell, and B. B. Barkalow, for the purchase and transfer of the charter of the Bank of Tekama, granted by the legislature of the Territory of Nebraska February 13th, 1857, to F. M. Isett, M. C. Brewster, W. N. Byers, and others, together with the amounts paid by said Akin, Campbell, and Barkalow, for books, plates, and fixtures for this association, with interest on same, at the rate of one and one-quarter per cent. per month from date of payments of said amounts, shall be considered as capital stock paid in, and shall be placed to their credit upon the books of this association in equal amounts, one third to each of said parties, or otherwise, as may be agreed upon between said parties and our board of directors; and we further agree that said amounts shall be received as payment upon the first and second instalments due and payable upon the capital stock subscribed individually by the said Akin, Campbell, and Barkalow; and in consideration of these provisions which we bind ourselves, our executors, administrators,
78 and assigns, to faithfully fulfill, the said F. M. Akin, Sam'l L. Campbell, and B. B. Barkalow agree and bind themselves, their executors, administrators, and assigns, to transfer the said charter, books, plates, and fixtures to this association, and shall relinquish all their right and title to same.

Art. 19. The directors may propose amendments to these articles of association, and, with the written consent of two-thirds of all the directors to such amendments, they shall have power to make or enact such amendments, and they shall be as binding on this association as the articles now adopted and agreed to.

Art. 20. The said Bank of Tekama shall go into operation on the first Monday of September, A. D. 1857, or as soon thereafter as practicable.

Subscription to the capital stock of the Bank of Tekama.

Date.				No. of Shares.	Signatures.	Seals.
June	18,	1857.	I subscribe for	500.	B. B. Barkalow, 500.	[SEAL.]
"	"	"	I subscribe for	100.	D. S. Barkalow, 100.	[SEAL.]
"	"	"	I subscribe for	100.	W. H. Baird.	[SEAL.]
"	"	"	I subscribe for	300.	S. L. Campbell.	[SEAL.]
July		"	I subscribe for	100.	J. E. Goss, 100.	[SEAL.]
		"	I subscribe for	200.	L. M. Hays and W. D.	
79					Alexander, 200.	[SEAL.]
		"	I subscribe for	500.	R. W. Akin, 500.	[SEAL.]

July	1857	I subscribe for	200.	J. M. Howe, 200.	[SEAL.]
"	"	I subscribe for	100.	James Hughes, 100.	[SEAL.]
"	"	I subscribe for	100.	Milton Hight, 100.	[SEAL.]
"	"	I subscribe for	300.	W.C.Tarkington,300.	[SEAL.]
" 22	"	I subscribe for	300.	F. M. Akin.	[SEAL.]
" 20	"	W. M. Akin,	100.	one hundred.	[SEAL.]
" "	"	A.W.Springer,	100.	one hundred.	[SEAL.]

Three notes referred to in a bill of exceptions, marked B, C, & D.

"B."

$2,912 50. ST. LOUIS, MO., *June 9th*, 1858.

Ninety days after date, we promise to pay to the order of Wm. Young Brown twenty-nine hundred and twelve $\frac{50}{100}$ dollars, for value received, negotiable and payable with out defalcation or discount. The Corn Exchange Bank New York.

S. L. CAMPBELL,
Pres'd't Bank of Tekama.

Protest attached to the above note.

[SEAL.] UNITED STATES OF AMERICA,
State of New York, ss:

On the tenth day of September, in the year of our Lord one thousand eight hundred and fifty-eight, at the request of the
80 Corn Exchange Bank, I, Smith E. Lane, a notary public, duly admitted and sworn, dwelling in the city of New York, did present the original note hereunto annexed at the Corn Exchange Bank, New York, to the paying teller thereof, and demanded payment thereof, which was refused.

Whereupon I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers and endorsers of said note, as against all those whom it doth or may concern, for exchange, re-exchange, and all costs damages and interest already incurred, and to be hereafter incurred, for want of payment of the same.

Thus done and protested in the city of New York aforesaid, in the presences of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

SMITH E. LANE,
Notary Public.

"C."

$5,865. ST. LOUIS, MO., *June* 9, 1858.

Sixty days after date, we promise to pay to the order of Wm. Young Brown five thousand eight hundred and sixty-five dol-
81 lars, for value received, negotiable and payable without defalcation or disconut. Payable at the Corn Exchange Bank, New York.

S. L. CAMPBELL,
Pr's'd't Bank of Tekama.

Protest attached to the above note.

UNITED STATES OF AMERICA,
[SEAL.] *State of New York, ss:*

On the eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-eight, at the request of the Corn Exchange Bank, I, Smith E. Lane, a notary public, duly admitted and sworn, dwelling in the city of New York, did present the original note, hereunto annexed, at the Corn Exchange Bank, New York, to the paying teller thereof, and demanded payment thereof, which was refused.

Whereupon I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers and endorsers of said note, as against all others whom it may or doth concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the same.

82 Thus done and protested in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

SMITH E. LANE,
Notary Public.

"D."

$2,000. SAINT LOUIS, MO., *June* 9, 1858.

Ninety days after date, we promise to pay to the order of William Young Brown two thousand dollars, for value received, negotiable without defalcation or discount. The Corn Exchange Bank, New York.

S. L. CAMPBELL,
Pres't Bank of Tekama.

Protest attached to the above note.

UNITED STATES OF AMERICA,
[SEAL.] *State of New York, ss:*

On the tenth day of September, in the year of our Lord one thousand eight hundred and fifty-eight, at the request of the Corn Exchange Bank, I, Smith E. Lane, a notary public, duly admitted and sworn, dwelling in the city of New York, did present the original note, hereunto annexed, at the Corn Exchange Bank, to the paying teller thereof, and demanded payment thereof, which was refused.

83 Whereupon I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers and endorsers of the said note, as against all others whom it does or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the same.

Thus done and protested in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

SMITH E. LANE, *Notary Public.*

"E."

Statement of G. M. Lee, referred to in bill of exceptions, and marked "E."

$2,100. SAINT LOUIS, MO., *April* 28, 1858.

Forty days after date, we promise to pay to the order of William Young Brown twenty-one hundred dollars, for value received, negotiable and payable, without defalcation or discount. Payable at the Franklin Branch of the State Bank of Ohio, Cincinnati.

S. L. CAMPBELL,
Pres't Bank of Tekama.

In June, 1859, as att'y for the pl'ff, William Young Brown,
84 I delivered the note, of which above is a copy, to the dep'y clerk, in room No. 2, superior court, Cincinnati, upon the order of Judge Spencer, of said court, in order to have a judgm't entered for the amount thereof, in an action in attachment, brought in said court by said Brown *vs.* Wm. D. Alexander. I believe the clerk passed the note, in the bundle of papers belonging to the case, up to Judge Spencer. Judgm't was entered in said court for the amount of said note in favor of Brown *vs.* Alexander. I have not seen the note since, but looked for it within a month after I handed it to said court, and, not finding it among the files of the case where it should have been, I desired Judge Spencer to search his drawer for the note; which was done; and I searched with him, but we did not find it. Judge Spencer is dead. He then stated to me that he had handed the note to the clerk with the rest of the papers. I had the clerk's office of said court carefully searched, and searched with the deputy clerk in the files where it belonged, and in the three rooms where it might possibly have strayed, and in all other places
85 about the court-house where it was supposed possibly it might be, but it could not be found. The note was made upon the same blank as the three herewith presented, and the signatures appeared to be exactly similar in this last note, and the three herewith presented.

Nothing was ever realized in the attachment suit *vs.* Alexander. The files of the case are herewith presented. The note should be among them, but never was since I received them.

G. M. LEE.

"F."

Printed circular referred to in bill of exceptions, marked "F."

Bank of Tekama, Tekama, N. T. Exchange office, Omaha, N. T. Capital $300,000. Cashier, F. M. Aikin. President, S. L. Campbell.

This bank goes into operation on the first Monday of September, 1857, and will do a legitimate banking business exclusively.

The following are the names of the stockholders :

B. B. Barkalow, Omaha city, N. T.
S. L. Campbell, " " "
F. M. Akin, " " "
W. H. Baird, " " "
D. L. Barkalow, " " "
W. M. Akin, Carlisle, Indiana.
86 A. W. Springer, Carlisle, Indiana.
R. W. Akin, Bloomington, Indiana.
W. C. Tarkington, " "
J. M. Howe, " "
James Hughes, M. C. "
W. D. Alexander, Gosport, "
L. M. Hayes, " "
J. E. Goss, " "
Milton Hight, (teller,) Tekama, N. T.

For information in regard to the character and standing of the above-named parties, refer to banker and business men of Indiana generally.

Hon. J. D. Bright, Indiana.
" G. A. Fitch, "
" John G. Davis, "
Gov. A. P. Willard, "
" A. A. Hammond, "
Messrs. John J. Anderson & Co., St. Louis.
" A. D. Hunt & Co., Louisville.
" Paddock & Co., Cincinnati.
John Thompson, esq., banker, New York.
F. A. Platt, esq., cash. Corn Exchange Bank, New York.
T. S. Hubbard, esq., cash. Grand Prairie Bank, Urbana, Ill's.
H. B. Curtis, esq., president Mount Vernon branch State Bank of Ohio.
Messrs. Gorham & Akin, St. Peters, M. T.
Col. Sam'l R. Curtis, Keokuk, Iowa.
Bankers and business men of Nebraska Territory.

87 *Copy of bank notes referred to in bill of exceptions, marked "G," "H," and "I."*

"G."

"1. Nebraska. Chartered 1857. 1.

The Bank of Tekama, in Burt county, will pay one dollar to bearer on demand. 10,076. Sept. 1, 1857.

F. M. Akin, Cash'r. S. L. Campbell, Pres't.

Stockholders individually liable."

"H."

"Two. Nebraska. Chartered 1857. Two.
No. 9,939.

The Bank of Tekama, in Burt county, will pay two dollars to bearer on demand. Nebraska, Sept. 1, 1857.

F. M. Akin, Cash'r. S. L. Campbell, Pres'd't.

Stockholders individually liable."

"I."

"5. Nebraska. Chartered 1857. 5.
No. 6,603.

The Bank of Tekama, in Burt county, will pay five dollars to bearer on demand. Sept. 1, 1857.

F. M. Akin, Cash'r. S. L. Campbell, Pres't.

Stockholders individually liable."

Depositions of Barkalow, Richardson, and Miller, referred to in bill of exceptions, marked "J," "K," "L."

88 "J," "K," and "L." "In assumpsit. In the circuit court, U. S., for the district of Indiana.

WM. YOUNG BROWN
vs.
WM. C. TARKINGTON *et al.*

To Benj. B. Barkalow: This is to give you notice, that upon the application of the above-named plaintiff, and in pursuance of the act of Congress in such case made and provided, I shall proceed, on the 11th day of April, A. D. 1860, at 9 o'clock A. M., to take the depositions of Lyman Richardson, Geo. L. Miller, of yourself, and others, at my office in Omaha city, Nebraska, and continue the taking thereof, if need be, from day to day, until completed, which depositions are to be used as evidence on the trial of the above cause, the said witnesses living more than 100 miles from Indianapolis, in the State of Indiana, the place of trial. At which taking you will attend.

JOHN R. MEREDITH,
[SEAL.] *Notary Public.*

Re'd a copy of this notice, and I waive time and consent that these depositions be taken forthwith.

B. B. BARKALOW,
G. L. MILLER,
LYMAN RICHARDSON.

APRIL 11, 1860.

89 Depositions of sundry witnesses taken before me, John R. Meredith, a notary public within and for the county of Douglass and Territory of Nebraska, residing in Omaha City, in said county, on the 11th day of April, A. D. 1860, at the office of said Meredith, in the town of Omaha, county and Territory aforesaid, to be read in evidence on the part of the plaintiff, in a certain suit at law pending in the circuit court of the United States, within and for the seventh circuit and district of Indiana, wherein William Young

Brown is plaintiff and William C. Tarkington and others are defendants.

"J."

Benjamin B. Barkalow, of lawful age, being produced and sworn on behalf of the plaintiff, deposeth as follows:

By plaintiff's attorney. Ques. 1st. State your name, age, and place of residence.

Ans. 1st. My name is Benjamin B. Barkalow, my age forty years, and reside at Omaha, in the Territory of Nebraska.

Ques. 2d. Are you acquainted with the plaintiff and defendants in this suit?

Ans. 2d. I am.

90 Ques. 3d. Please state who the plaintiff and defendants are.

Ans. 3d. The plaintiff is Wm. Young Brown; the defendants are myself, Frank M. Akin, William H. Baird, D. L. Barkalow, R. W. Akin, A. W. Springer, W. M. Akin, W. C. Tarkington, J. M. Howe, James Hughes, William D. Alexander, L. M. Hays, Joseph E. Goss, and Milton Hight.

Ques. 4. Were you concerned in an institution known as the Bank of Tekama, in the Territory of Nebraska; and if so, who were concerned with you?

Ans. 4. I was, together with all the above-named defendants.

Ques. 5. When did you go into business with them in said banking business?

Ans. 5. The first day of September, 1857.

Ques. 6. State where your places of business were when you opened your stock-books; how much stock was taken; whether the bank of Tekama issued bills to circulate as money; and if so, to what amount, and all concerning it.

Ans. 6. We had a banking office at Tekama, in Burt county,

91 Nebraska; we had an exchange office at Omaha City, Nebraska, known as the exchange office of the Bank of Tekama; our stock-books were opened and the stock was taken, amounting to three hundred thousand dollars, by us defendants before we commenced business, as early as July, A. D. 1857, and after the first day in September, in the same year, the bank issued bills, to circulate as money, to the amount of ninety-eight thousand dollars.

Ques. 7. State who the officers of said bank were, from its commencement of operations until the spring of 1858.

Ans. 7. Samuel L. Campbell was president, Frank M. Akin was cashier; from and after the 7th day of December, A. D. 1857, I was assistant cashier.

Ques. 8. Who was the principal agent of the bank in executing notes, bonds, and other liabilities?

Ans. 8. The president, Samuel L. Campbell, was in the habit of signing notes, bills of exchange, and creating such and other liabilities of the bank, which were always recognized by the stockholders of the bank, so long as the institution did business as a bank.

92 Ques. 9. Do you know anything about five certain notes made by the Bank of Tekama, by S. L. Campbell, its president, said notes amounting to $13,877 50, payable to the plaintiff, William

Young Brown? and if so, state the date of those notes and all about them.

Ans. 9. I was present when the notes were made; they were dated in April or May, 1858, and were made payable to William Young Brown; one of them of $2,100, was payable at the Franklin branch of the State Bank of Ohio, in Cincinnati, Ohio; I do not now remember where the other notes were made payable.

Ques. 10. State what was the consideration for which these notes were given, and who received the consideration.

Ans. 10. The first twenty-one hundred dollars was for Ohio currency—the Bank of Tekama received the benefit. I know that about four thousand dollars were advanced by the plaintiff Brown to Bridge Miller, Richardson & Co., with the mutual understanding between Brown, the bank, and said Bridge, Miller, Richardson & Co., that the bank should be accountable to the plaintiff Brown for that amount.

Ques. 11. How do you know what was the arrangement?

93 Ans. 11. I was assistant cashier of the bank at the time. The business was done through me, and I know that to be the fact, and the bank so recognized the same, and the before-mentioned four thousand dollars advanced to Bridge, Miller, Richardson & Co. is a part of the money included in the other four notes of the five notes already mentioned.

Ques. 12. Take the account hereto attached marked "Exhibit B," in which there is an account between the bank and yourself, and the bank and other parties, and state whether you recognize those accounts to be correct.

Ans. 12. The first account is my own, and it is all correct and has been settled. The balance of the accounts are against Barkalow, assistant cashier, F. M. Akin, cashier, and S. L. Campbell, president, I believe to be correct. The balance of these several accounts are properly charged to the respective parties on the books of the said bank, and the balance due to the plaintiff, Brown, as shown in this account, are included in the four notes before mentioned, and said accounts are correct.

Ques. 13. Were you present at the time Bridge, Miller, Rich-

94 ardson & Co. borrowed this money from Wm. Young Brown, the plaintiff, as stated in the said account marked "B," and do you know of your own knowledge that Bridge, Miller, Richardson & Co. did receive the said money from the plaintiff, Brown, and that it was the mutual understanding that the bank should be responsible to the plaintiff, Brown, for the money thus loaned by him?

Ans. 13. I was present when said money was loaned, and do know of my own knowledge that such was the understanding, and that the bank should be responsible to the plaintiff, Brown, for the money thus loaned by him to said Bridge, Miller, Richardson & Co. Upon looking more particularly at the account against F. M. Akin, cashier, in the said "Exhibit B," I find one charge dated March 9th, 1858, of six thousand dollars, to which I object, the same being money promised to be loaned to said Brown, but which was not so done.

Ques. 14. Do I understand you to say that the money advanced by the plaintiff, Brown, to Bridge, Miller, Richardson & Co. was so ad-

vanced on the account of the Bank of Tekama, and that the
95 amount is now justly due from said bank to said plaintiff?

Ans. 14. The amount is now justly due from said bank to the said plaintiff, and is included in the four notes above referred to.

Ques. 15. You state, in answer to a prior question, that in regard to the account against F. M. Akin, cashier, that one charge, dated March 9th, 1858, of six thousand dollars, you object to, and say that it was money promised to be loaned by the bank to Wm. Young Brown, the plaintiff. Now state whether that money was not made up by the bank, and placed in the possession and under the control of the plaintiff, Brown.

Ans. 15. My answer to that is this. The money was issued by the bank, and placed in the safe, and delivered to the plaintiff, to be used by him during the months of April and May, 1858, and before that time the bank had occasion to use, and did use, the said six thousand dollars, and thereupon the plaintiff made the said charge in said account, dated March 9th, 1858. And further saith not.

(Signed) B. B. BARKALOW.

96 "K."

Lyman Richardson, of lawful age, being produced and sworn on behalf of the plaintiff, deposes as follows:

Questions by plaintiff's attorney.

Ques. 1. What is your name, age, and place of residence?

Ans. 1. Lyman Richardson; twenty-five years; reside in Omaha City, Nebraska.

Ques. 2. Are you acquainted with the parties in this suit?

Ans. 2. I am acquainted with the plaintiff, William Young Brown, and with S. L. Campbell, F. M. Akin, and William H. Baird, and Milton Hight, defendants.

Ques. 3. State if you had any arrangement, in the spring of 1858, with the Bank of Tekama, to borrow of the bank a certain amount of money; and if yea, state all about the transaction.

Ans. 3. The firm of Bridge, Miller, Richardson & Co., of which firm I am a member, had an arrangement with the officers of the Bank of Tekama, by which the bank was to lend us as much money
97 as we should need to complete the hotel building known as the Herndon House, in Omaha City. This arrangement was made in the month of February, in the year 1858.

Ques. 4. Take in your hand the account marked exhibit "B," and hereto attached, in which there is an account shown to exist between the plaintiff and Bridge, Miller, Richardson & Co., on account of the Bank of Tekama, and state whether that account is correct, and whether the amount of money checked out as shown in that account was so checked under the arrangement before alluded to with the Bank of Tekama, on the part of Bridge, Miller, Richardson & Co.

Ans. 4. The account is correct as near as I can reccollect, and the amounts as shown in that account as checked out were drawn under the arrangement with the bank before mentioned.

Ques. 5. From whom did you receive this money as checked?

Ans. 5. We received it at the exchange office of the Bank of Tekama, in Omaha, of William Young Brown, the plaintiff, and his clerks.

Ques. 6. Was there any understanding between the plain-
98 tiff, the Bank of Tekama, and your firm, that Bridge, Miller, Richardson & Co. should check this money out of the office of William Young Brown, and that Bridge, Miller, Richardson & Co. should settle with the bank, and the bank with the plaintiff?

Ans. 6. We so understood it. We did not consider ourselves responsible to the plaintiff, Brown.

Ques. 7. Have you ever had any conversation with officers of the bank, relative to the settlement of this account with them?

Ans. 7. I had a conversation with S. L. Campbell, the president of the bank, in the month of May, 1858, in which he told me not to give any notes to William Young Brown, or settle the account before mentioned with him, but to settle the same with him, said Campbell, president of the bank.

Ques. 8. Do I understand you to say that the amount of this account was obtained from William Young Brown on the credit of the Bank of Tekama?

Ans. 8. I do so wish to be understood. And further saith not.

LYMAN RICHARDSON.

"L."

99 George L. Miller, of lawful age, being produced and sworn on behalf of the plaintiff, deposeth as follows:

By plaintiff's attorney: Ques. 1. State your name, age, and place of residence.

Ans. 1. George L. Miller; age thirty years; and reside in Omaha City.

Ques. 2. State what you know of any arrangement between the Bank of Tekama and Bridge, Miller, Richardson & Co., in which said company were to borrow from the bank a certain amount of money in the spring of 1858.

Ans. 2. As a member of the firm of Bridge, Miller, Richardson & Co., I know there was an arrangement by which the said firm borrowed from the officers of the Bank of Tekama a certain amount of money, amounting to about four thousand dollars.

Ques. 3. Who paid you this money?

Ans. 3. We received this money at the exchange office of William Young Brown, the plaintiff.

Ques. 4. On whose credit or account was this money obtained from the exchange office of William Young Brown?

100 Ans. 4. We obtained the money from the Bank of Tekama, under the arrangement before alluded to.

Ques. 5. Was there not a special arrangement between your firm and the Bank of Tekama, that your firm should check out of the exchange office of Wm. Young Brown the amount of money so agreed to be loaned to you by the bank?

Ans. 5. There was, and under that arrangement we drew the money from the exchange office of the plaintiff, Wm. Young Brown.

Ques. 6. Are you acquainted with the parties to this suit?

Ans. 6. I am acquainted with William Young Brown, the plaintiff, and the defendants F. M. Akin and Sam'l L. Campbell. And further saith not.

(Signed) G. L. MILLER.

101 UNITED STATES OF AMERICA,
Nebraska Territory, Douglass County, ss:

I, John B. Meredith, do hereby certify that I am a notary public within and for the county of Douglass and Territory of Nebraska, duly commissioned and sworn; that on the 11th day of April, A. D. 1860, at my office in Omaha City, in the county and Territory aforesaid, being the time and place in the caption of these depositions, before me came personally the above-named Benjamin B. Barkalow, Lyman Richardson, and George L. Miller, who, after being carefully examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth in the cause named in the caption of these depositions, did each for himself subscribe the same in my presence after the same had been reduced to writing by me in the presence of the witnesses respectively; that I am not of counsel or attorney to either of the parties in the cause aforesaid, or in any manner whatever interested in the event thereof; that no notice of the time and place of taking of said depositions was given to the defendants, their agent, or attorney, (except the notice hereto appended, marked "A,") because, to the best of my knowledge,
102 neither of them, except B. B. Barkalow, was then within one hundred miles of Omaha, the place of taking of the same; that the said witnesses each live and reside in said Omaha City, and at a greater distance than one hundred miles from the city of Indianapolis, in the district of Indiana, the place of trial; and that the depositions were retained by me until the same were sealed up by me and transmitted to the court in which said cause is pending. All of which is certified to by me this 12th day of April, A. D. 1860, at Omaha City aforesaid.

Witness my hand and notarial seal.

[SEAL.] JOHN R. MEREDITH,
Notary Public, Douglass County, Nebraska.

Notary's fees on this deposition, $5 00.

ACCOUNTS REFERRED TO AND ATTACHED TO THE ABOVE DEPOSITIONS.

B. B. Barkalow, as't cash'r Bank of Tekama, in ac. with William Young Brown.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
1858.			1858.		
Feb'y 11	C'y.....	60 00	Feb'y 12	C'y.....	200 00
" 13	..".....	200 00	" 13	..".....	123 00
" "	..".....	100 00	" 19	Coin	340 00
" 15	..".....	100 00	" 22	C'y.....	250 00
" 19	..".....	70 00	" 23	..".....	50 00
" 20	..".....	40 00	" 27	Balance	380 17
" 22	..".....	26 00			
" 18	..".....	549 17			
" 23	..".....	60 00			
" 24	Scrip	40 00			
" 25	C'y.....	55 00			
" 26	..".....	20 00			
" 27	..".....	22 00			
		1,342 17			1,342 17
March 1	To bal.....	380 17	March 8	C'y.....	30 00
" "	C'y.....	125 00	" 5	..".....	30 00
" 2	..".....	229 00	" 15	..".....	345 00
" 3	..".....	10 00	" 20	..".....	189 00
" 4	..".....	32 37	" 25	..".....	76 00
" 5	Coin	30 00	" 29	..".....	4,998 00
" 8	C'y.....	35 00	" "	..".....	255 00
" 9	..".....	511 30	" 30	..".....	125 00
" 11	..".....	153 00	" 31	..".....	100 00
" 12	..".....	60 00			
				Am't carried	
104	(Over.)			fo'w'd.....	6,148 00
1858.				Bro't fo'w'd..	6,148 00
March 17	C'y.....	100 00	March 31	Balance	1,346 54
" 18	..".....	430 00			
" 20	..".....	97 60			
" 22	..".....	55 00			
" 23	..".....	193 50			
" 25	..".....	252 50			
" 26	..".....	205 20			
" 27	..".....	178 00			
" 29	..".....	3,100 00			
" 30	..".....	1,012 00			
" 31	..".....	305 00			
		7,494 64			7,494 64

B. B. Barkalow, as't cash'r Bank of Tekama, &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
April 1	To bal.....	1,346 64	April 1	By error.....	50 00
" "	C'y.....	172 30	" 5	C'y.....	884 96
" 2	..".....	1,053 00	" 30	Balance	2,632 75
" 3	..".....	157 36			
" 5	..".....	74 50			
" 6	..".....	95 45			
" 7	..".....	215 80			
" 8	..".....	160 00			
" 13	..".....	108 15			
" 19	..".....	211 26			
" 20	..".....	1 25			
" 24	..".....	2 00			
		3,567 71			3,567 71
May 1	To bal.....	2,632 75	May 26	C'y.....	45 00
" 7	C'y.....	170 04		Balance	2,757 79
		2,802 79			2,802 79
June 1	To bal.....	2,757 79	July 5	By Tekama..	2,757 79

Bridge, Miller, Richardson & Co., on ac. of Bank of Tekama, in ac. with William Young Brown.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
1858.			1858.		
Feb'y 13	C'ks.....	25 00	Feb'y 17	Coin.....	450 00
" 15	C'y.....	11 00	" 22	..".....	40 00
" 16	..".....	210 00	" 18	..".....	130 00
" "	..".....	4 00	" 27	Balance	805 17
" 17	..".....	957 50			
" "	..".....	93 20			
" 20	..".....	37 87			
" 18	..".....	57 60			
" 27	..".....	29 00			
		1,425 17			1,425 17

Bridge, Miller, Richardson & Co., on ac., &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
March 1	Bal.....	805 17	March 29	By coin	100 00
" "	C'y.....	200 00		Balance	1,640 17
" "	..".....	4 00			
" 2	..".....	53 00			
" 3	..".....	6 00			
" 5	..".....	185 10			
" "	..".....	5 00			
" 6	..".....	25 00			
" 8	..".....	12 00			
" 13	..".....	2 75			
" 19	..".....	14 00			
" 23	..".....	54 00			
" 25	..".....	3 00			
" 27	..".....	210 60			
" "	..".....	10 00			
" 29	..".....	114 10			
" 30	..".....	37 00			
106		1,740 17			1,740 17
1858.			1858.		
April 1	To bal.....	1,640 17	April 7	By coin	784 15
" 2	C'y.....	500 00	" 12	..".....	700 00
" 3	..".....	10 00	" 24	..".....	300 00
" 5	..".....	226 50	" 30	Balance	4,068 08
" 6	..".....	6 00			
" 7	..".....	835 00			
" 8	..".....	44 00			
" 12	..".....	966 00			
" 13	..".....	15 00			
" 14	..".....	196 92			
" 15	..".....	555 00			
" 16	..".....	43 39			
" 17	..".....	325 00			
" 19	..".....	226 75			
" 20	..".....	5 00			
" 23	..".....	51 50			
" 24	.".....	160 00			
" 26	..".....	41 00			
" 29	..".....	5 00			
		5,852 23			5,852 23
May 1	Bal.....	4,068 08	May 11	Coin.....	145 00
" 3	C'y.....	5 00	" 26	B. R.....	185 10
" 6	..".....	30 00	" 31	Balance	3,792 98
" 11	..".....	200 00			
		4,303 08			4,303 08

Bridge, Miller, Richardson & Co., on ac., &c —Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
June 1	Bal..... ..	3,792 98	July 5	By T'k'ma...	4,103 08
July 12	..".....	104 00			
" 26	Bal..... ..	26 10			
		4,103 08			4,103 08

107 *S. L. Campbell, Pres't Bank of Tekama, in ac. with William Young Brown.*

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
1858.			1858.		
Feb'y 12	C'y.....	5 00	Feb'y 15	C'y.....	100 00
" 16	..".....	100 00	" 25	..".....	6 25
" 19	..".....	13 00	" 27	..".....	375 95
" 20	..".....	318 45			
" 22	..".....	12 00			
" 23	..".....	19 00			
" 24	..".....	9 75			
" 25	..".....	5 00			
		482 20			482 20
March 3	C'y.....	77 00		Balance	138 75
" 11	..".....	60 00			
" 17	..".....	1 75			
		138 75			138 75
Apr'l 1	Bal.....	138 75	Apr'l 30	Balance	757 25
" 12	C'y.....	130 00			
" 19	..".....	330 00			
" 23	..".....	2 50			
" 28	..".....	156 00			
		757 25			757 25
May 1	Bal..... ..	757 25	May 26	By..... ...	505 00
" 6	C'y.....	65	31	Balance	252 90
		757 90			757 90
June 1	To bal.....	252 90	July 5	B' 'K'ma	757 90
July 5	Error	505 00			
		757 90			757 90

108 *F. M. Akin, cash'r bank of Tekama, in ac. with William Young Brown.*

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
1858.			1858.		
Feb'y 9	Acc's.....	3,399 93	Feb'y 10	C'y.....	102 70
" 10	C'y.....	104 00	" "	.....	5,064 58
" 12	..".....	29 00	" 22	.....	707 00
" 17	..".....	82 00	" 18	.....	73 00
" "	..".....	73 00	" 26	.....	245 62
" 19	..".....	1,395 50	" 27	Balance	1,630 95
" 20	..".....	377 00			
" 22	..".....	681 00			
" 24	..".....	71 00			
" 25	..".....	143 00			
" 27	..".....	690 95			
" 13	..".....	206 97			
" 9	..".....	570 00			
		7,823 85			7,823 85
March 1	Balance	1,630 95	March 5	C'y.....	7,500 00
" "	Coin.....	500 00	" 9	..".....	32 40
" 5	Coin and c'y..	1,282 05	" 10	..".....	668 60
" 8	..".....	537 50	" 18	..".....	318 00
" 9	..".....	6,000 00	" 19	..".....	1,390 00
" 13	..".....	10 00	" 25	..".....	16 00
" 15	..".....	220 00	" 29	..".....	520 00
" 17	..".....	87 00		Balance	2,314 75
" 18	..".....	326 25			
" 22	..".....	2,016 00			
" 31	..".....	150 00			
109		12,759 75			12,759 75
1858.			1858.		
April 1	To bal.....	2,314 75	April 1	C'y.....	2 00
" "	C'y.....	763 00	" 6	..".....	455 40
" 2	..".....	50 00	" 30	Balance	4,910 35
" 3	..".....	500 00			
" 5	..".....	1,001 00			
" 6	..".....	128 00			
" 8	..".....	36 50			
" 13	..".....	66 50			
" 14	..".....	103 00			
" 16	..".....	375 00			
" 21	..".....	12 00			
" 30	..".....	18 00			
		5,367 75			5,367 75

T. M. Akin, cash'r bank of Tekama, in ac., &c.—Continued.

DR.—*Checks.* CR.—*Deposits.*

		Amount.			Amount.
May 1	To bal.....	4,910 35	May 4	C'y.....	10 00
" 6	C'y.....	4 00	" 6	..".....	70 00
" 7	..".....	50 00	" 26	..".....	583 20
" 10	..".....	5,000 00	31	Balance.....	9,399 15
" 11	..".....	98 00			
		10,063 35			10,063 35
June 1	To bal.....	9,399 15	July 5	C'y.....	8,204 32
July 5	" "	7,618 77		B. R.....	10,115 60
" "		1,302 00			
		18,319 92			18,319 92

"M."

110 *Deposition of Samuel L. Campbell, put in evidence by defendants, referred to in bill of exceptions, and marked "M."*

UNITED STATES OF AMERICA,
District of Indiana:

In the circuit court of the United States.

The President of the United States to Davis H. Hamilton, or some other person authorized to take and certify depositions, greeting:

Reposing full confidence in your prudence and fidelity, you are hereby empowered and authorized to cause to come before you, at your office in Carbondale, Jackson county, Illinois, on the seventeenth day of April, A. D. 1862, between the hours of 8 o'clock a. m. and 6 o'clock p. m., (and continue between the same hours from day to day until the whole be completed,) and cause to be examined, under oath or affirmation, to be by you administered, Samuel L. Campbell, witness on the part of the defendants, in a cause now pending in the circuit court of the United States for the district of Indiana, wherein William Young Brown is plaintiff, and William C. Tarkington
111 and others are defendants, in a plea of assumpsit, in all such interrogatories as shall be put to them; that you carefully write down such examination, or cause the same to be done by the deponents, respectively, or some disinterested person, in your presence and under your direction; and after the same shall have been carefully read to or by the deponents, respectively, you cause the same to be subscribed by them. That you thereupon make out a certificate, and

annex the same to such depositions, stating therein that the witnesses were sworn (or affirmed) according to law, by whom the depositions were written, (and if the same were written by the deponents or some disinterested person, that the same was done in your presence and under your direction,) whether or not the adverse party attended, and the time and place of taking the depositions, and the hours between which the same were taken. That you sign and attest such certificate under your official seal, and seal up the depositions in a proper and sufficient paper envelope, enclosing therein this writ, and direct the same to the clerk of said court at Indianapolis, Indiana, endorsing on such envelope the names of the parties to such suit, and of the witnesses whose depositions are inclosed, and that you forward
112 the same without delay, endorsing your fees and those of those witnesses on each deposition, and if paid, by whom paid.

Witness Hon. Roger B. Taney, chief justice of Supreme Court of the United States, and the seal of the circuit court of the
[SEAL.] United States for the district of Indiana, this 14th day of April, A. D. 1862.

JOHN H. REA, *Clerk.*

STATE OF ILLINOIS, *Jackson County:*

On this 17th day of April, A. D. 1862, before the undersigned, D. M. Hamilton, a notary public, in and for said county, and duly authorized by law to take depositions, being the officer named in the commission hereto attached, personally came A. L. Roche, who, being by me duly sworn, upon his oath, says that the cause in the said commission named is now pending in the circuit court of the United States for the district of Indiana, at Indianapolis, in said State of Indiana, and that neither the plaintiff, William Young Brown, nor any of his attorneys reside within one hundred miles of this place, and that Samuel L. Campbell, a witness on behalf of the defendants, produced and sworn before me, in pursuance of the within commission, resides at , in the State of Illinois, and at a greater distance
113 than one hundred miles from Indianapolis in said State of Indiana, where said suit is pending. And further says not.

A. L. ROACHE.

Sworn to and subscribed before me the day and year aforesaid.
[SEAL.] D. N. HAMILTON, *N. P.*

STATE OF ILLINOIS, *Jackson County, ss:*

Deposition of Samuel L. Campbell taken before me, Davis N. Hamilton, a notary public within and for the county of Jackson and State of Illinois, on the 17th day of April, 1862, at my office, in the town of Carbondale, in said county and State, in pursuance of a commission issued out of the United States circuit court for the district of Indiana to me directed, to be read as evidence on the part of the defendants on the trial of a certain cause pending in the United States circuit court for the district of Indiana, wherein William Young

Brown is plaintiff, and William C. Tarkington and others, are defendants, taken between the hours of 8 o'clock a. m. and 6 o'clock p. m., same day.

114 Samuel L. Campbell, of lawful age, being first duly sworn, makes answer to the following interrogatories, to wit:

Interrogatory 1st. State your age, name, and place of residence.

Answer 1st. My name is Samuel L. Campbell; my age is thirty-one; and I reside in Carbondale, Jackson county, Illinois.

Int. 2d. During what period were you connected with the Bank of Tekama, Nebraska Territory, and in what capacity?

Ans. 2d. From its origin to its close; from about September, 1857, to May, 1858, I acted in the capacity of president.

Int. 3d. Who composed the Hotel Company at Omaha City in October, 1857, and thence forward?

Ans. 3d. George Bridges, Lyman Richardson, G. L. Miller, and myself; I think my connexion with said company commenced about that time.

Int. 4th. How much money did this Hotel Company owe the plaintiff?

Ans. 4. About forty-five hundred dollars.

115 Int. 5. To what amount does the plaintiff now hold the obligations of the Bank of Tekama?

Ans. 5. A little over 12,000 dollars; between that and thirteen thousand dollars.

It. 6. Of what is that indebtedness made up?

Ans. 6. Of three items—the 1st of the Hotel Co. debt above mentioned, which funds were advanced by said Brown to the Hotel Company for the Bank of Tekama, by order of Mr. Barkalow; 2d, six thousand dollars in Bank of Tekama currency, borrowed by Mr. Barkalow from said Brown, to be replaced as soon as he could return it to him from Saint Louis, in consummating a trade with Sahler & Co., which I suppose was the six thousand dollars borrowed by said Brown from the said bank under an article of agreement entered into between the said bank and said Brown on the 9th day of February, 1858, providing, among other things, for the loan of that sum, but do not know certainly, not being present; and, 3d, two thousand dollars loaned to myself, as president of the Bank of Tekama, in State Bank of Ohio currency. This makes the amount of the indebtedness, and the way it arises.

116 Int. 7. At what time and place did the loan of the two thousand dollars take place, mentioned in your last answer as the last item of said indebtedness.

Ans. 7. At Saint Louis, Mo., in the month of May, 1858, I think.

Int. 8. Upon what security was this loan made?

Ans. 8. The indorsement of the Citizens' Saving Institution, and Mr. Barkalow.

Int. 9. Upon what security did Mr. Barkalow borrow the six thousand dollars, got from the plaintiff before spoken of?

Ans. 9. None, whatever; it was an accommodation matter.

Int. 10. What amount of the currency of the Tekama bank was given to the plaintiff to secure the obligations of which you have spoken? When, where, and from whom did he receive the currency, if any?

Ans. 10. Seventeen thousand five hundred dollars; he got it at St. Louis, Mo., on the 7th and 9th June, 1858, from me, as president of the Bank of Tekama.

117 Int. 11. How long was the business of said bank done at Tekama? and if removed thence, at what time, and to what place?

Ans. 11. From the 1st of September, 1857, until its close, some time in May, 1858.

Int. 12. State what connection you had, if any, with the Citizens' Saving Institution at Saint Louis, Mo.; when and how it commenced.

Ans. 12. The Citizens' Saving Institution was bought by myself, B. B. Barkalow, R. H. Campbell, and W. S. Hilyer, about February, 1858, for the purpose of having a redemption office in Saint Louis, Mo., for the Bank of Tekama.

Int. 13. Who were its directors and officers after said purchase?

Ans. 13. The stockholders above named were its directors; R. H. Campbell, president, and myself cashier.

Int. 14. Who were the officers of the Bank of Tekama during its existence?

Ans. 14. I was its president; F. M. Akin, cashier.

118 Int. 15. At the time the Bank of Tekama sold to Brown, the plaintiff, by their article of agreement of 9th February, 1858, what amount of the stock of said bank was owned by yourself and B. Barkalow respectively?

Ans. 15. I bo't from R. W. Akin $\frac{5}{30}$, J. M. Hughes $\frac{1}{30}$, W. C. Tarkington $\frac{3}{30}$, making $\frac{9}{30}$, and my original subscription was $\frac{3}{30}$, making $\frac{12}{30}$ owned by me. B. B. Barkalow had bo't D. L. Barkalow out $\frac{1}{30}$, owned $\frac{5}{30}$, making $\frac{6}{30}$ owned.

The transfer of these shares were made on the books on the first of May, 1858, being the time the books came into my hands at Saint Louis, Mo.; at this time I also bo't out J. M. Howe $\frac{2}{30}$, making me, on the 1st of May, $\frac{14}{30}$ of the stock. The written transfer from R. W. Akin, J. M. Hughes, and W. C. Tarkington, was dated, I believe, on the 2d of Feb'y, 1858. I mean to convey the idea that I bo't out J. M. Howe on the first of May, 1858.

Int. 16. Had B. B. Barkalow any authority to act for the bank in the management of its affairs?

Ans. 16. He had none from me, and none from any other person that I know of.

119 Int. 17. At the time or before making of the contract, on the 9th of February, 1858, with the plaintiff, did you disclose to him fully the character and condition of the bank and the amount of your interest in it?

Ans. 17. I did, as far as I remember; particularly, I told him of my purchase of the stock referred to above, in answer to int. 15.

Int. 18. Look at the original deposition of Benjamin Barkalow, on

file in this suit, and at the accounts thereto attached, and state whether you perceive any inaccuracies in said account; and if so, in what particular.

Ans. 18. In the account of William Young Brown against F. M. Akin, cashier, he, said Akin, cashier, is charged, March 9, 1858, with six thousand dollars, for which there is no corresponding credit for the six thousand loaned Brown, as per agreement of 9th February, 1858, which credit the bank is entitled to.

Int. 19. State, if you know, what has become of the above-mentioned original transfers of stock from W. C. Tarkington, R. H. Akin, and James Hughes to yourself.

Ans. 19. They were sent to me at Crawfordsville, Indiana, where I received them by regular course of mail soon after their
120 execution; I put them away with my papers. I have since that time made diligent search for them and cannot find them, and believe them to be lost.

(Signed) S. L. CAMPBELL.

STATE OF ILLINOIS,
Jackson County:

I, Davis N. Hamilton, a notary public, within and for the county and State aforesaid, do hereby certify that I am a notary public within and for the said county and State, duly commissioned and sworn; that on the 17th day of April, A. D. 1862, at my office, in the town of Carbondale, in the county of Jackson, and State of Illinois aforesaid, being the time and place mentioned in the caption of this deposition, before me personally came the above-named Samuel L. Campbell, who, after being carefully examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause named in the caption of these depositions, did subscribe in my presence, after the same had been reduced to writing by me in the main, but a small portion by the said Samuel L. Campbell, under my observation, and all in the presence of the said witnesses; that I am not of counsel or attorney to either of the parties in this cause, or in any manner whatsoever interested in the events
121 thereof; that no notice of the time and place of taking of said deposition was given to the plaintiff or his attorney, except the annexed commission, and the affidavit also annexed, marked "A." That the said witness lives and resides in the town of Carbondale, county of Jackson, and State of Illinois, and at a greater distance than one hundred miles from the city of Indianapolis, in the district of Indiana, the place of trial; and that the deposition was retained by me until the same was sealed up by me and transmitted to the court in which said cause is pending; all of which is certified to by me this the 17th day of April, A. D. 1862.

In testimony whereof, I have hereunto set my hand and [SEAL.] seal notarial at my office, in Carbondale, Illinois, the day and date first above mentioned.

D. N. HAMILTON, *N. P.*

Notary public's fees, $3 00.
Rec'd payment from A. L. Roache.

D. N. HAMILTON.

"N."

Contract and exhibit referred to in bill of exceptions, marked "N," and put in evidence by defendants.

Articles of agreement, made and concluded this 9th day
122 of February, A. D. 1858, by and between the Bank of Tekama, in Burt county and Territory of Nebraska, of the first part, and William Young Brown, of the city of Omaha and Territory aforesaid, of the second part, witnesseth: that for and in consideration of the sum of one dollar in hand paid to the said Bank of Tekama, by the said Brown, the receipt of which is hereby acknowledged, and in consideration, as hereinafter provided, the said Bank of Tekama doth hereby bargain and sell unto the said Brown their office, situate in the city of Omaha, known as the exchange office of the Bank of Tekama, the fixtures of office, books, stationary, safe, &c., according to the bill of sale hereunto attached; together with the good will and business connected with said office.

2d. The said Bank of Tekama further agrees to give the said Brown six thousand dollars ($6,000) of their own notes, and which said notes the said Brown is to protect, by furnishing coin or exchange in exchange for the notes, whenever any of them shall be redeemed at the bank.

3d. The said Bank of Tekama further agrees to take up and retire from this region the notes of said bank, now in circulation in this region, amounting, as is supposed, to about ten thousand
123 dollars, and to open and continue an office for circulation and redemption of the notes of said Bank of Tekama in the city of Sai't Louis and State of Missouri, on or before the 15th day of March next, (1858,) and to make and keep their currency bankable at all times in the said city of Saint Louis; it being expressly understood between the parties that the said Bank of Tekama is not to put any of their notes in circulation in the region of Omaha city or Council Bluffs and State of Iowa. In consideration whereof, the said Brown agrees to pay the said Bank of Tekama six hundred and sixty-eight dollars and sixty-two cents for the exchange office of the Bank of Tekama, the books, fixtures, safe, &c., according to bill of sale hereto attached, the good will and business connected with said office.

2. The said Brown further agrees to continue the redemption of the notes of said Bank of Tekama in coin, exchange, and eastern currency, at reasonable rates, as has been the custom of said exchange office of Bank of Tekama, so long as the said Bank of Tekama shall continue to pay specia on all their bills when presented for redemption at the bank, and keep the currency bankable at Saint Louis
124 and State of Missouri.

To the faithful performance of which articles of agreement, we each bind ourselves, our heirs, executors, administrators, and successors, forever.

In testimony whereof, we have hereunto set our hands and seals on the day and date first above written.

BANK OF TEKAMA,
By S. L. CAMPBELL, *Pres't.* [SEAL.]
WM. YOUNG BROWN. [SEAL.]

Bill of sale attached to the above agreement.

William Young Brown bt. of Bank of Tekama:

1	b'l desk	13 00
1	writing desk	40 00
1	schreene	15 00
1	table	5 00
1	safe	400 00
1	discount book	18 00
1	Feregen's register	7 00
1	land "	8 00
1	tickler	8 50
1	tax register	5 00
1	time "	11 00
1	land warrant register	8 00
1	bill book	11 00
1	collection book	8 00
1	copy press	12 00
1	dr'ft book	18 00
	1 ind. ledger	16 00
125	1 blotter	75
	C'ks	10 00
	Frt. on desks	10 00
	Frt. on safe	150 00
1	sign board	48 66
8	paper weights	1 75
1	file c'k	1 50
1	pen r'k	40
1	index ledger	1 50
1	file	25
1	tin cutter	20
1	carmine ink	50
1	inkstand	1 15
1	sand-stand	40
	Counter	160 00
22	c'k books	12 00
1	p'r shears	2 00
2	chairs	3 00
1	stove	38 80
1	file	25
		1,046 61
15	acc	156 99
		889 92

By safe	$200	
15 acc	39	
		221 00
		$668 62

Rec'd payment.

S. L. CAMPBELL, *Pres't.*

Copy of charter referred to in bill of exceptions, and marked "O."

126 "O."

AN ACT for the charter of the Bank of Tekama, in Burt county, Nebraska Territory.

Sec. 1. *Be it enacted by the council and house of representatives of the Territory of Nebraska*, That T. M. Isett, N. C. Brewster, B. B. Northup, W. A. Moore, and W. N. Byers, G. W. Chilcott, Luther Newton, F. R. Wright, L. P. Barnam, Judson R. Heyde, and J. F. Wilson, their heirs and assigns, are hereby appointed commissioners, and they, or a majority of them, are authorized to carry into effect, from and after the passage of this act, the establishment of a bank in Burt county, Nebraska Territory, to be styled and called the Bank of Tekama, with a capital of one hundred thousand dollars, which may be increased, at the will of the stockholders, to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each; and the said company, under the above name and style, are hereby declared capable, in law, of issuing bills, notes, and other certificates of indebtedness, dealing in exchange, and doing all necessary to the carrying on of a regular and legitimate banking business; and also to buy and possess property of all kinds,
127 and to sell and dispose of the same, to contract and be contracted with, to sue and be sued, to defend and be defended against, in all courts of this Territory.

Sec. 2. That the commissioners herein appointed shall have power to cause books to be opened for the subscription of said stock in such manner and at such time and places as the majority of them may appoint; that whenever fifty thousand dollars is fully subscribed, then those making such subscription shall have power to choose a board of directors, whose duty it shall be to organize said bank by electing a president, vice-president and cashier; and that in the election of said directors and officers, each share subscribed or then held shall entitle the holder thereof to one vote, which may be given in person or by proxy.

Sec. 3. It shall be the duty of the president or vice-president, either of whom shall be competent, and cashier to attach their respective names to all bills or notes issued by said bank to circulate as currency; and that the stockholders shall be, each and individually, liable for the full and final redemption of such issue, payable at their

banking-house in gold or silver; and that this charter shall have an existence and be in full force, if faithfully complied with, for the term of twenty-five years from the date of its passage and becoming a law of the Territory.

128 Sec. 4. The stock of said bank shall be assignable and transferable according to such rules and under such restrictions as the board of directors may prescribe, who shall have power at all times to make such rules and regulations as may appear for the well-being of said bank, not inconsistent with the Constitution of the United States and the laws of this Territory.

Sec. 5. The directors of the bank shall make or cause to be made through their cashier, under oath or affirmation, an annual report [to] the auditor of the Territory, (or State, as the case may be,) a full exhibit of the condition of said bank, which report shall be published in three newspapers of this Territory by said auditor.

Sec. 6. This act shall be in force from and after its passage.

(Signed) J. L. GIBBS,
Speaker of the House of Representatives.

(Signed) L. L. BOWERS,
President of Council.

I hereby certify that the within bill has passed the house of representatives of the Territory of Nebraska by a two-thirds vote over the governor's veto, and has thereby become a law.

(Signed) J. L. GIBBS,
Speaker of the House.

S. M. CURRAN, *Chief Clerk.*

129 I hereby certify that the within bill passed the council of the Territory of Nebraska by a two-thirds vote over the governor's veto, and has thereby become a law.

(Signed) LEVITT L. BOWERS,
President of the Council.

Attest: (Signed) O. F. LAKE, *Chief Clerk.*

I hereby certify that the foregoing is a true and correct copy from the original roll on file in my office.

[SEAL.] T. B. CUMING,
Secretary of Nebraska Territory.

"P."

Assignments referred to in bill of exhibits and marked "P," put in evidence by the defendants.

Known all men by these presents that I, Luther Newton, of the city of Buffalo, and State of New York, for and in consideration of the sum of five hundred dollars paid me by S. A. Strickland, the receipt of which is hereby acknowledged, I do hereby and by these presents have quit-claim, sold, and do hereby transfer and assign all my right, tittle, and interest

in and to a bank charter styled and named "The Bank of Te-
130 kama," granted by the third legislature of the Territory of Nebraska, in the year eighteen hundred and fifty-seven.

Buffalo, March 10th, 1857.

LUTHER NEWTON.

Before justice D. D. BIDWELL.

Personally appeared before me this day the above-named Luther Newton, personally known to me to be the indentical person whose name is attached to the above instrument as granted, and he acknowledges the same to be his voluntary act and deed for the purposes therein mentioned.

Buffalo, March 10, 1857.

D. D. BIDWELL,
Justice of the Peace.

For a valuable consideration, the receipt of which is hereby acknowledged, I, G. H. Chilcott, of Tekama, Burt county, N. T., hereby assign and transfer to A. J. Hanscom, of Omaha City, Nebraska Territory, all my right, tittle, and interest in, to, and under a certain charter, passed by the legislative assembly of the Territory of Nebraska on the 13th day of February, A. D. 1857, and entitled "An act to charter the Bank of Tekama, in Burt county."

Witness my hand 30th day of March, 1857.

G. W. CHILCOTT.

JAS. M. WOOLWORTH,
CHAUNCEY WITTSE.

131 For a valuable consideration, the receipt of which is hereby acknowledged, we, T. M. Isett and W. C. Brewster, of the city of Muscatine, in Muscatine county, and State of Iowa, hereby assign and transfer to Poppleton & Byers, of Omaha City, Douglas county, Nebraska Territory, all our right, tittle, and interest in and to a certain charter, granted by the legislative assembly of the Territory of Nebraska, on the 13th day of March, A. D. 1857, and entitled, "An act to incorporate the Bank of Tekama," in Burt county.

Witness our hands this fourth day of March, A. D. 1857.

THOS. M. ISETT.
W. C. BREWSTER.

In presence of—
JOHN C. SHIPLEY.
JAS. PRITCHARD.

For a valuable consideration, the receipt whereof is hereby acknowledged, I, B. B. Northop, of Detroit, Wayne county, Michigan, hereby assign and transfer to A. J. Poppleton, of Omaha City, Nebraska Territory, all my right, tittle, and interest in, to, and under a certain charter, passed by the legislative assembly of the Territory

of Nebraska, on the 13th day of February, A. D. 1857, and entitled,
"An act to charter the Bank of Tekama, in Burt county."
132 Witness my hand this third day of March, A. D. 1857.
B. B. NORTHOP.

In presence of—
T. S. BLACKMAN.
W. A. MOORE.

For a valuable consideration, the receipt whereof is hereby acknowledged, I, W. A. Moore, of the city of Detroit, in the county of Wayne, and state of Michigan, hereby assign and transfer to A. J. Poppleton, of Omaha, Nebraska Territory, all my right, title, and interest in and to a certain charter, passed by the legislative assembly of the Territory of Nebraska, on the 13th day of February, A. D. 1857, entitled, "An act to charter the Bank of Tekama, in Burt county."

Witness my hand this 4th day of March, A. D. 1857.
W. A. MOORE.

In presence of—
T. S. BLACKMAN.
B. B. NORTHOP.

For a valuable consideration, the receipt whereof is hereby acknowledged, I, Silas A. Strickland, of Bellville, Nebraska Territory, hereby sell, assign, transfer, and set over to A. J. Poppleton and William N. Byers, of Omaha City, in said Territory, all my right,
title, and interest in, to, and under a certain charter, passed by
133 the legislative assembly of the Territory of Nebraska, on the 13th day of February, A. D. 1857, and entitled, "An act to charter the Bank of Tekama, in Burt county," it being the intention hereby to convey as well the interest which I hold as chartee under said charter as that derived by assignment from Luther Newton, of the city of Buffalo, in the State of New York, of date March 10, A. D. 1857.

Witness my hand this 12th day of June, A. D. 1857.
SILAS A. STRICKLAND.

OMAHA CITY, N. T.
June 10, *A. D.* 1857.

In consideration of the sum of ten thousand dollars to us paid, the receipt whereof is hereby acknowledged, we, Andrew J. Hansom, William A. Byers, and Andrew J. Poppleton, of Omaha City, Douglass county, Nebraska Territory, hereby sell, assign, transfer, set over, and convey to F. M. Akin and Samuel L. Campbell, of said county and Territory, a certain franchise or charter granted by the legislative assembly of the Territory of Nebraska, by act of said legislative assembly, dated February 13th, A. D. 1857, and passed by said body
on that day, as will appear by reference to the original roles
134 on file in the office of the secretary of said Territory, known

and designated as "An act to charter the Bank of Tekama, in Burt county," with all the rights, privlages, and immunities to which we, the said Hanscom, Byers, and Poppleton, are entitled under said act.

WM. N. BYERS.
ANDREW J. HANSOM.
ANDREW J. POPPLETON.

Witness:
CHAS. H. HENRY.

"Q."

Letter from John D. Briggs to S. L. Campbell referred to in bill of exceptions, and marked "Q."

EXCHANGE OFFICE, B'K OF TEKAMA,
Omaha City, N. T., April 17, 1858.

S. L. CAMPBELL, Esq., *Saint Louis, Mo.*

DEAR SIR: Yours of the 6th to J. A. C., are at hand. I am sorry those d'fts on Merritt, Campbell & Co. were not paid, for they were drawn by order of B. B. B., and endorsed by him, and unless you send some currency up so we can pay them we will be obliged to close doors, for we have not the means of obtaining the c'y, for you well know that everything that could be used as collateral was used before Mr. B. B. B. left, and the way I understand it, the six
135 thousand dollars of Mr. Brown is also used as collatteral with Sahler & Co. You see we cannot pay them unless something may turn up unknown of now.

We have not heard from Mr. Brown since he left St. Louis, and know nothing of his transactions.

Should you let any of these d'f'ts return *drawn* on Citizens' Saving Institution, it will effect the bank as much as Mr. Brown.

I will not, under any circumstances, draw any more until the return of Mr. Brown.

I will have some New York exchange in a few days, and I will send it to you, in order to help you through.

J. A. has gone up to Tekama, with some coin, (three hundred and seventy-five dollars,) which, by the way, left us with but about five hundred and twenty dollars in safe. I must close in time to get this in the mail.

Yours, truly,

JNO. D. BRIGGS, *Teller.*

P. S.—I was compelled to draw on you for eight hundred dollars (in two d'fts) yesterday, and you need not fear any more for awhile.

Yours, truly,

JNO. D. BRIGGS, *Teller.*

Give my regards to Mr. B. B. B. and family; tell him we miss him like thunder.

"DILL."

136 "R."

Letter from John D. Briggs to S. L. Campbell, referred to in bill of exceptions, and marked "R."

EXCHANGE OFFICE, B'K OF TEKAMA,
Omaha City, April 27, 1858.

S. L. CAMPBELL, *Cashier, Saint Louis, Mo.*

DEAR SIR: This day we rec'd the notice of some d'fts on the Citizens' Saving Institution; 4 is the number of their protests, and call for one thousand dollars. You know well that the fact of these d'fts being protested, drawn from the *exchange office of the B'k of Tekama*, would materially injure the reputation of the bank. I think that it was a very nearsighted trick in you. Besides using Mr. Brown very mean, you injure yourself to an extent you will not be able to recover from for some time.

I suppose Mr. Brown has been in Saint Louis, and hope he has made some arrangements by which some of those d'fts will be paid.

You know they were drawn by Mr. Barkalow, and should have been taken care of by *him* or *you*.

We have no money here, and but yesterday we drew on
137 you for something like five hundred dollars, in order to procure some c'y to pay our depositors' c'ks.

Trusting you will receive my letter of 20th, which enclosed the acc. of Bridge, Miller, Richardson & Co., B. B. Barkalow, F. M. Akin, cash'r, and S. L. Campbell, which I hope will show to your satisfaction the state of affairs here, in connection with *you* and *your institution*.

I am sorry this has occurred, and if there is any way of fixing it, wish I knew of it.

I am, truly yours,

JOHN D. BRIGGS, *Teller*.

"S."

Letter from John D. Briggs to William Young Brown, referred to in bill of exceptions, and marked "S."

EXCHANGE OFFICE OF B'K OF TEKAMA,
Omaha City, May 3d, 1858.

WM. YOUNG BROWN, Esq., *Saint Louis, Mo.*

DEAR SIR: Saturday there was 20 pr. cent. paid between Tekama c'y and coin, and I know of one instance of five pr. ct. being paid for *Platt Valley*. This is all on account of our being in such a condition

as not being able to redeem any at all, not even *twenty-five*
138 *dollars* that was presented yesterday afternoon; now, this won't do very long.

Sahler & Co., have been discounting every good chance, and the city has more money of that kind than it will bear. D——d old Hughes to thunder, for one day last week we wanted to borrow five hundred dollars, and the infernal old *rascal* would not oblige us; we, however, found friends at the Bank of Nebraska, and I know if we had not made the raise there, we would have been obliged to close, for we had no money to pay c'ks.

The best thing you can do at present is to make your appearance here at the earliest possible time, no matter as to costs, and for your own sake, bring *some* money, no matter if it is Tekama, but something to redeem would be preferable.

We have been facing on every body, and as soon as those drafts come that have been protested, we will be obliged, without a supply, to close doors.

I am, in haste, truly yours,

JNO. D. BRIGGS.

P. S.—The six thousand you speak of being in the safe, is unfortunately at old Hughs', and he has paid it out, and we have nothing in its stead; this is what caused all the *trouble;* if we had of had this c'y, we would of had no *trouble.*

Yours, "DILLS."

139 "T."

Letter from J. A. Campbell to Barkalow & Campbell, St. Louis, referred to in bill of exceptions, and marked "T."

OMAHA CITY, *Nebraska, April 15th,* 1858.

Messrs. BARKALOW & CAMPBELL, *St. Louis, Mo.*

GENTLEMEN: I have been compelled to draw on you for $500, payable at 10 days sight, for the hotel co. I could not possibly do any better; you know, Mr. Barkalow, how things are here; we cannot help ourselves. We have already drawn on you for some $10,500 or $11,000, and will be compelled to draw on you for more; it is our only salvation, and I can do nothing else than draw upon you for it; we are making a hard row for you to hoe, but we have a hard one ourselves.

You will see Mr. Brown when he returns, and I hope can make some arrangements with him to meet everything we have drawn upon you for.

Gen. Larimer has arrived home; says he is going to start a banking-house in Leavenworth, and I expect will be calling upon you for some Tekama.

Regards to Mrs. Barkalow and family, and I am, yours, truly,

J. A. CAMPBELL.

140 "U."

Letter from Wm. Young Brown to B. B. Barkalow, referred to in bill of exceptions, and marked "U."

Wm. Young Brown, exchange banker, and general real estate agency, Omaha City, Nebraska Territory.

OMAHA CITY, *Nebraska, May* 13, 1858.

B. B. BARKALOW, Esq., *St. Louis, Mo.*

MY DEAR SIR: Yours of the 5th inst. is just received. I am unfeignedly glad you did take up that $1,300 matter, and am as unfeignedly sorry that you should allow any of my d'fts to go to protest at all. If you had not the money, why not take up the drafts and give certificates of deposit payable at 10 or 20 days, which would be about as good as cash, and if necessary let them hold the drafts as collateral; my ac't is good, as you have learned by Mr. Briggs, and by letting my drafts go to protest you are convicting me of fraud, and ruining my business reputation.

I trust you will get your $20,000 Wisconsin.

Truly, WM. YOUNG BROWN.

"V."

Letter from William Young Brown to S. L. Campbell, referred to in bill of exceptions, and marked "V."

141 William Young Brown, exchange banker, and general real estate agency, Omaha City, Nebraska Territory.

OMAHA CITY, *Nebraska, May* 19, 1858.

S. L. CAMPBELL, *Cash'r Citizens' Saving Institution, Saint Louis, Mo.*

MY DEAR SIR: All kind of rumors about you to-day; that the Bank of Tekama has broke, that the Citizens' Saving Institution has closed, &c. Pregram, as far as I can learn, created the alarm yesterday, but on what authority I am unable to learn. To-day we cannot do anything with Tekama. I have not received any news from you since yours of the 8th inst.; is there anything wrong? Telegraph me.

I have been compelled to send back some of the drafts which were protested, as I have nothing to take them up with, you having my funds; the Pen'a c'y has not yet come, and I am annoyed amazingly with the returned drafts.

Any that I cause to be sent back you must at all hazard take up, as I would not return them, although my ac't is good, if I had any way of taking them up.

Write me every day or two, so that I may contradict any
142 rumors that may be started from time to time.

Yours, WM. YOUNG BROWN.

P. S.—I have not received any word from Briggs as yet.

Yours, WM. YOUNG BROWN.

"W."

Letter from William Young Brown to B. B. Barkalow, referred to in bill of exceptions, marked "W."

MONONGAHELA HOUSE,
Pittsburgh, Pa., April 16, 1858.

B. B. BARKALOW, Esq., *Saint Louis, Mo.*

MY DEAR SIR: I telegraphed you from Washington city informing you that I had purchased *another* Virginia charter; the old one was sold, and I leave to you and Mr. Webb and others to account for it. The provisions of the charter of the "Bank of Manassa," located at Fort Royal, in Warren county, are the same as the one you had previously purchased.

I paid him one thousand dollars down, five hundred in money, and five hundred in a draft on the Citizens' Saving Institution, Saint Louis, Mo., payable by agreement in *Tekama currency*, ten days after sight; this I want you to take care of, and we will hold the charter on joint ac't.

143 Mr. Webb has ordered the plate in books, which are to be got up of the very best style, and to cost not less than $960, which he is to pay for. He is also to look up stocks and bonds for us, and I made him the same proposition that you made Mr. Hughes, as to furnishing the money for the purchase of stock, which he has under adisement, and will write me at Saint Louis.

When we get organized, we are to pay him an additional amount (four thousand dollars) in the currency of the bank, which he promises to give such a circulation as not to trouble the bank.

Mr. John B. Finlay, cashier of the Kittaning Bank, is desirous of taking one-fourth interest in said bank with us.

I ought to have mentioned that the draft on you at 10 days' sight is not expressed on its face *Tekama c'y*, as Webb said he preferred not to have it so expressed on the draft, but is so in the article of agreement, so that you are not to pay it in anything else. I expect to be in St. Louis by Friday or Saturday next, when I will explain fully.

I am, yours,

WM. YOUNG BROWN.

144 "X."

Letter from S. L. Campbell to B. B. B., referred to in bill of exceptions, and marked "X."

SAINT LOUIS, MO., *March* 18, 1858.

FRIEND B. B. B.: I send you by Brown 5,000 Tekama; the balance I will send in a short time. If you need more, get what Brown has, and replace it with the circulation you take in, with the arrangement you have made with Mr. Hughes & Co. I have not heard from Gosport yet in regard to the Eastern B'k, but hope to to-day. If I hear favorably, I will go with the parties to N. Y. next week, and get back as soon as I can.

Mr. Brown can tell you how I will look in our new office, and can give you the general information as to my feeling of our success, &c. My regards to the family, and all the friends.

Yours, as ever,

S. L. CAMPBELL.

"Y."

Guarantee referred to in bill of exceptions, and marked "Y."

Know all men by these presents that, I Samuel L. Campbell, of Omaha City, Nebraska Territory, have this day purchased of James Hughes, of Monroe county, one hundred shares of the capital
145 stock of the Bank of Tekama, located in Burt county, in said Territory. That I hereby obligate myself that this purchase is to be an entire release of said Hughes to pay any subscription of stock upon any of the books, or any other obligations of said bank, or any part thereof, at any time whatever.

S. L. CAMPBELL.

February 2, 1858.

"Z."

Guarantee referred to in bill of exceptions, and marked "Z."

Know all men by these presents that I, Samuel L. Campbell, of Omaha City, Nebraska Territory, have this day purchased of R. W. Akin, of Monroe county, Indiana, five hundred shares of the capital stock of the Bank of Tekama, located in Burt county, in said Territory. That I hereby obligate myself that this purchase is to be an entire release of said Akin to pay any subscription of stock upon any of the books, or any other obligations of said bank, or any part thereof, at any time whatever.

S. L. CAMPBELL.

Feb'y 2, 1858.

"No. 1."

Guarantee referred in bill of exceptions, and marked No. 1."

146 Know all men by these presents that I, Samuel L. Campbell, of Omaha City, Nebraska Territory, have this day purchased of William C. Tarkington, of Monroe county, three hundred shares of the capital stock of the Bank of Tekama, located in Burt county, in said Territory. That I hereby obligate myself that this purchase is to be an entire release of said Tarkington to pay any subscription of stock upon any of the books, or any other obligations of said bank, or any part thereof, at any time whatever.

S. L. CAMPBELL.

Feb'y 2, 1858.

"No. 2."

Assignment referred to in bill of exceptions, and marked No. 2."

Be it known that F. M. Akin, of Carlisle, Indiana, having this day sold, assigned, and transferred to me his interest in the Bank of Te-

kama, Nebraska Territory, I do hereby agree and obligate myself to release him from all obligations to and of said Bank of Tekama, and I agree and obligate myself further, for and in consideration of said assignment and transfer, to assume the payment, in the notes of said Bank of Tekama, of a certain bill of exchange due to Bloomington Bank, Bloomington, Indiana, for six thousand three hund-
147 red dollars, ($6,300.) with interest from maturity, at the rate of one and one-quarter per cent, per month; the said bill having been drawn by F. M. Akin, endorsed by myself, and accepted by Samuel L. Campbell, dated June 18th, 1857, and due and payable, one hundred and seventeen days after date, at the banking-house of A. D. Hunt and Co., Louisville, Kentucky, and which, in default of payment, was legally and duly protested.

In testimony whereof, I have hereunto set my hand and seal this 24th day of April, A. D. 1858.

[SEAL.] B. B. BARKALOW.

"No. 3."

Agreement referred to in bill of exceptions, and marked "No. 3."

Be it known, that W. M. Akin, of Carlisle, Indiana, having this day assigned and transferred to me his entire interest in the Bank of Tekama, Nebraska Territory, I do hereby agree to release him from all obligations to and of said bank; and in consideration of said assignment and transfer, I further agree to pay him within ninety days one thousand dollars of the notes of the bank of Tekama, Nebraska Territory.

In witness whereof, I have hereunto set my hand and seal this 24th day of April, A. D. 1858.

[SEAL.] B. B. BARKALOW.

Witness: F. M. AKIN.

"No. 4."

148 *Agreement referred to in bill of exceptions, and marked "No. 4."*

Be it known that A. W. Springer, of Carlisle, Indiana, having this day assigned and transferred to me his entire interest in the Bank of Tekama, Nebraska Territory, I do hereby agree to release him from all obligations to and of said bank; and in consideration of said assignment and transfer I further agree to pay him within ninety days one thousand dollars of the notes of the Bank of Tekama, Nebraska Territory.

In witness whereof, I have hereunto set my hand and seal this 24th day of April, A. D. 1858.

[SEAL.] B. B. BARKALOW.

Witness: F. M. AKIN.

"No. 5."

Receipt referred to in bill of exceptions, marked "No. 5"

Received, Saint Louis, Mo., June 7, 1858, of S. L. Campbell, president of the Bank of Tekama, six thousand dollars of the notes

of said bank, which I am to hold as collateral for the payment of a bill of exchange for twenty-one hundred dollars, drawn by B. B. Barkalow and accepted by S. L. Campbell, president of the bank of Tekawa, dated April 28, 1858, payable forty days after date
149 at the Franklin Bank of Ohio at Cincinnati; which, if said bill of exchange is paid at maturity by said bank, then I am to deliver the six thousand dollars to said bank, and if not paid, said collaterals are thereby forfeited to me.

WILLIAM YOUNG BROWN.

"No. 6."

Receipt referred to in bill of exceptions, marked "No. 6."

Rec'd, Saint Louis, Mo., June 9, 1858, of S. L. Campbell, pres't of the Bank of Tekama, eight thousand eight hundred dollars of the notes of the Bank of Tekama, and an order on D. K. Colburn, New York, for twenty-seven hundred doll's, which I am to hold as collateral for the payment of one note for five thousand eight hundred and sixty-five dollars, dated June 9th, 1858, payable sixty days after date, payable at the Corn Exchange Bank, New York; which, if the said note is paid at maturity, I am to deliver over said collaterals to said Campbell, pres't, but if said note is not paid at maturity, the said collaterals are forfeited to me.

WM. YOUNG BROWN.

"No. 7."

150 *Cancelled note referred to in bill of exceptions, marked "No 7," put in evidence by pl'ff.*

$5,912 $\frac{50}{100}$. ST. LOUIS, Mo., *June* 9, 1858.

Ninety days after date, we promise to pay to the order of Wm. Young Brown five thousand nine hundred and twelve and $\frac{50}{100}$ dollars, for value received, negotiable without defalcation or discount. Payable at the Corn Exchange Bank, New York.

[Signature cut off.]

Cancelled by giving the am't in the said note.

WM. YOUNG BROWN.

"No. 8."

Letter from S. D. Campbell to John D. Briggs, referred to in bill of exceptions, marked "No. 8."

ST. LOUIS, Mo., *May* 6, 1858.

JOHN D. BRIGGS, *Omaha, N. T.*

D'R SIR: Yours of the 27th inst. to hand; contents noted.

You seem to fly off the handle in the beginning of your letter in regard to the drafts. I wrote your house that I would accept up to $5,000 of your d'fts, which I have done, and have paid near $1,000 of

them here. This is all I could do. And in regard to its being any *trick*, remember in future to *keep cool* before you make such broad ascertions as this, for it is false.

After taking up the Chicago d'fts I don't understand what
151 has become of all the c'y you have taken in for the balance of the d'fts. You had, when B. B. B. left Omaha, some $2,000 c'y, and you had only drawn $1,000. Why you should be short on c'y I don't, as I said, understand. Mr. Brown took up $2,000 of c'y with him, and ere this is with you.

We are doing all we can, and in our arrangement with Mr. B. we are to retire the circulation as fast as possible; but we did not propose to employ an agent to buy it in and send the entire load on us at once. Then, again, we made an arrangement with Sahler & Co., by which they got considerable of our c'y; and this was done with the knowledge of Mr. B., and was satisfactory all around. We all know that the fact of their having the c'y they would use some, more or less, of it there, and would render it more plenty there than it would be otherwise.

Mr. Brown understands all perfectly, and can explain it, that you may be satisfied.

Yours, resp't,

S. L. CAMPBELL.

"No. 9."

Letter from S. L. Campbell to John D. Briggs, referred to in bill of exceptions, and marked "No. 9."

SAINT LOUIS, *May* 8, 1857.

J. D. BRIGGS, *Omaha:*

152 Yours of the 30th April to hand. We have at all times told the parties holding the d'fts that there was only a misunderstanding about them, and that the drawer was all right. We will do the same for all in future.

We have paid for Brown as follows:

D'fts	6,124 32
Tek. c'y, by B.	2,000 00
Debt of Brown	$8,124 32

With some d'fts due next week not paid, but accepted by us.

Jackson can't do us any harm, d—— him.

Yours, truly,

S. L. CAMPBELL.

"No. 10."

Letter from S. L. Campbell to Wm. Young Brown, referred to in bill of exceptions, and marked "No. 10."

SAINT LOUIS, *May* 11, 1858.

WM. YOUNG BROWN, *Omaha, N. T.:*

We are at last compelled to throw out Tekama, as we have not the c'y to provide for the same. There has now come from N. T.

some 10 or 12,000 of the issue; 6,000 of it we have taken up; the balance is still in the city, waiting for redemption. I will
153 state that we, on last week, sent to Bloomington and Gosport for the $30,000 of our issue they held, and which they have told us was locked up in their vaults; but on demanding the same we can't get it, from the fact that they have used it, and it is all coming down on us like a clap of thunder in a clear sky. I wrote up to Hight yesterday to suspend for 30 to 60 days, until we can get everything up in shape to work again.

I regret that we have, at this late day, been compelled to take this step; but it is out of the question for us to protest 30,000 in Ind. and M. T., 10,000 of our own out, and 17,000 in Sahler & Co.'s hands, as most of that is now thrown out indiscriminately by them; so all the parties tell me that I converse with, and from what Allen C. writes me on the same subject. We shall endeavor to get the matter in a good shape as soon as possible; how long it will take I now can't tell.

This will be known through other parties as soon as you get this, I suppose. Will write you soon.

Yours, truly,

S. L. CAMPBELL.

154 "No. 11."

Letter from Campbell to Brown, referred to in bill of exceptions, and marked "No. 11."

SAINT LOUIS, *May* 24, 1858.

WM. YOUNG BROWN, *Omaha:*

D'R SIR: The enclosed receipt is the property of the ex. office of the B'k of Tekama. File it, that you may have something to show when the original rec'pt of F. M. Akin, cas., is presented, if it should be.

Yours, truly, S. L. CAMPBELL.

"K."

Request of plaintiff, referred to in the bill of exceptions, marked "K."

Circuit court U. S., district of Indiana.

WM. YOUNG BROWN
vs.
WM. C. TARKINGTON *et al.*

Plaintiff requests of the court the following charge:

1st. If all of defendants subscribed his name in the stock book put in evidence as the names appear therein, subsequent to the articles
155 of association, and amounts of stock there shown, and such subscription was followed by the organization of a bank in Burt county, Nebraska, managed by S. L. Campbell, as president, and F. M. Aikin, as cashier, which issued the circular in evidence, and proceeded to do a banking business, these facts would

create a joint and several liability against defendants to creditors of said bank.

2d. If any defendant authorized another to sign his name, as it appears in said stock book, or knowing the name was so signed, assented thereto, and permitted it to remain, he is equally liable as if he had written the name himself.

3d. By the articles of association, power is given to S. L. Campbell to act as president of the Bank of Tekama and to sign the notes thereof, and notes signed by said Campbell, in his capacity of president, if given for a proper consideration, are equally binding upon the stockholders, defendants, as if given by them in person.

4th. The bank bills and promissory notes of the Bank of Tekama, signed by its president, stand upon the same footing and create an equal obligation.

5th. No transfer of stock made by any defendants upon the books of the bank will relieve them from liability.

156 6th. If, after defendants signed the stock book in evidence, the proper officers of the Bank of Tekama put in public circulation the circular in evidence, holding out to the public that defendants were stockholders of said bank, they cannot escape a continued liability by the mere transfer of stock upon the books of the bank, but in order to relieve themselves from liability, must have given public notice in some manner of the dissolution of their connection with said bank.

7th. If any defendant, who had not signed said stock book, became aware of the fact that his name was signed thereto by another, and of the organization and operation of the Bank of Tekama, and was published to the world as a stockholder thereof by its officers, and took no action to contradict the assertion that he was such stockholder, but allowed himself to be published to the world as such stockholder, he is liable to the same extent as any other stockholder who signed said stock book himself.

"L."

Charge of the court referred to in bill of exceptions, marked "L."

WILLLIAM YOUNG BROWN
vs.
W. C. TARKINGTON and others. } Assumpsit.

GENTLEMEN OF THE JURY: This case is one of importance and interest, and has been prosecuted and defended with great earnestness and ability. The plaintiff seeks to charge the defendants as partners in a bank in Nebraska Territory, called the Bank of Tekama.

If they were partners, their contract is joint as it regards third persons, no matter what was the agreement among themselves as to the shares which each should hold in the association.

If an association of persons is formed for the purpose of carrying on private banking, and they organize and proceed to do a banking business, appoint a president and cashier, who publish to the world

the names of the stockholders, their liability is joint as it respects creditors, and in their dealings with them they are to be charged as partners.

Their joint liability to creditors is not affected by the amount of stock which each one has taken, nor by the consideration that the stock has or has not been paid, in accordance with the terms
157 of the articles of association. And an individual stockholder cannot escape a continued liability to general creditors by the mere transfer of stock on the books of the bank, or otherwise; but if he wishes to withdraw from the bank, and avoid further responsibility, he must give some public notice of his having dissolved his connexion with the institution.

This public notice is not necessary, when an individual creditor who deals with the bank is told that such stockholders have sold out and transferred their shares, and it is not necessary that such transfer should be entered on the books. All dealings with the bank afterwards, if such a notice is given, are upon the credit of the remaining stockholders, who alone can be charged as partners.

In an action on contract against several, it must not only appear on the face of the pleadings that their contract was joint, but that fact must be proved on the trial.

If the jury believe from the evidence that Brown was told by Campbell that Hughes, Col. Akin, and others, had transferred their stock to him, Campbell then the plaintiff cannot recover in any event in this action; because, if he fails to recover against one
158 defendant, he fails to recover against all, inasmuch as he has said in his pleadings that *all* were liable.

This action was brought to recover on 3 several notes given in Saint, Louis, Mo., June 9, 1858, and one in St. Louis, Mo., Ap'l 28, 1858, by S. L. Campbell, signing himself pres'd't Bank of Tekama, to the plaintiff, amounting in the aggregate to $12,877 50, and for the additional sum of $227 in notes of the bank. There is no question made on Campbell's liability.

The question for your decision is, whether the defendants, who are alleged to be stockholders of the Bank of Tekama, are liable.

If the undertaking of the defendants, in establishing the Bank of Tekama, was lawful, and the business carried on by them in the Territory was lawful, and Brown was not guilty of fraud or collusion, but simply did a legitimate business with them, and on settlement a balance was found due him, and these notes were given for the adjusted balance, then he is entitled to recover.

The legislation of the Territories of the United States are under the control of Congress, and subject to the limitations prescribed by Congress.

159 On the 1st July, 1836, Congress declared that no act of the Territorial legislature of any of the Territories of the United States incorporating any bank, or any institution with banking powers or privileges, hereafter to be passed, shall have any force or effect whatever, until approved and confirmed by Congress.

The Territorial legislature of Florida had, at its session in Febru-

ary preceeding, created a number of corporations with banking powers, which was deemed a great evil, and Congress, besides annulling those acts, passed this law, providing against the recurrence of such mischievous legislation.

It is conceeded by the pl'ff and defendants, that this law of Congress governed the legislation of Nebraska, and that no banking charter granted by the legislature of Nebraska was valid until ratified by Congress. In 1857 the territorial legislature of Nebraska did pass an act for the charter of the Bank of Tekama, in Burt county, Nebraska Territory, by a two-thirds vote over the veto of the gov'r, which the pl'ff and defendants both admit was not approved by Congress. Did these defendants attempt to organize under this dead charter, to give it life and power, and did the plaintiff aid them to do so? If the object of the defendants was, not to engage in private banking, but to avail themselves of the charter of the bank, and to issue notes for circulation under what is commonly denominated chartered privileges, and they did actually issue such notes, and the plaintiff aided them in their object, gave credit and character to the bank, circulated its notes, and protected them when returned for redemption, then both plaintiff and defendants were engaged in an illegal business, and both are equally in fault, and the law will help neither.

Banking corporations were prohibited in Nebraska, unless the consent of Congress was obtained, and yet it is probable that but few of the people of Nebraska in fact knew of this prohibition. It is well known that bank notes of a chartered institution get better and freer circulation than the notes of private bankers, even in States where individuals have a right to associate themselves together and issue bank notes. The people read the acts of the legislature, and ascertain that banking powers are conferred on certain corporations, and when they find the notes in circulation of one of those corporations, they do not inquire whether they are legally issued, but assume that the institution has been legally organized, and is engaged in legitimate business.

All persons whose business it is to throw out, give character to, and protect bank paper that is prohibited by law, are engaged in an unlawful employment.

The history of this case, as developed in the evidence, is this:

F. M. Akin, one of the defendants, went to Nebraska in May or June, 1857, and made an arrangement to organize a bank under the Tekama charter, and with Campbell and Barkalow purchased the charter, and paid, or agreed to pay, ten thousand dollars for it, Akin having advanced $6,000 of the amount.

While there he drew up articles of association, and Campbell and some others subscribed stock, and he sent the stock book and copy of charter to Bloomington, Indiana, where he lived, and the other stock subscriptions were there obtained.

The articles of association, without the 18th article, would indicate clearly that the parties were associated together for private banking. But the 18th article provides that the money ex-

171 pended by Campbell, Barkalow, and Akin for the purchase of the charter, was to be considered as so much capital stock, for which they were to receive credit on the books of the bank. More money was given for the charter than was ever paid in on stock subscriptions, and it is a fair inference that the charter was bought for the purpose of banking under it.

The charter locates the bank in an undefined place in Burt county, and so do the articles of association. It is fair to infer from the evidence, that the place in Burt county, where the bank was finally fixed, was small, and unhandy to reach, and that any one who banked under the charter would wish to have an exchange office in Omaha, the seat of government of the Territory. A good deal has been said about the articles of association recognizing the individual liability of the stockholders, and hence it is claimed that the association was for the purpose of private banking, but the jury will recollect that the charter contains the same provision.

The bank, such as it was, went into operation about the first of September, 1857, and, as if to settle beyond controversy that it was the chartered bank which was then put in motion, notes in
172 the similitude of ordinary bank notes were issued, with the word "Chartered 1857" on them. Every person taking one of these notes would see at once that it was a note purporting to be issued by a bank incorporated by the legislature of Nebraska.

The provisions of the charter for the organization of the bank were not observed, but in some loose way not clearly defined, and certainly not to be commended, the bank was set in operation, and the most important thing, so far as the public were concerned, was done—notes were issued.

Two or three of the stockholders paid a little money, hardly enough to cover running expenses, and before the collapse of the institution, $90,000 of worthless notes were scattered broadcast over the country, and the hard earnings of many a poor man exchanged for them.

It is immaterial, in the view taken of this case by the court, to determine whether a franchise can be sold in the way this one was, or whether the bank was organized according to law. It is unquestionably true, if banking had been authorized in Nebraska, and an information had been filed questioning the corporate existence of the bank of Tekama, that the decision would have been adverse
173 to the bank. *In fact*, the bank did assume banking powers, and issued bills for circulation.

It is conceded by the plaintiff and defendants, that the charter was worthless and void; if so, and it was galvanized into life, and made to throw off large issues of paper, those who originated the wrong, and those who aided in consummating the wrong, are equally culpable. Did the plaintiff substantially aid the defendants in their illegal business, and is he chargeable with knowledge of its illegality? The evidence is that he commenced banking in Omaha in the spring of 1857, across the street from where the bank of Tekama afterwards had an office. He did not know Barkalow until that

spring, nor Campbell until the summer following. He found Barkalow doing business in Omaha, and using the currency of the bank of Nehama Valley at Brownville, of which he was pres'd't, another Nebraska bank not sanctioned by Congress. Campbell had no fixed place of business, and had just returned from an exploring expedition.

The plaintiff, in his testimony, states that he knew of the
174 Tekama charter, but did not know that Barkalow and Campbell held it, until Akin came out to start the bank, in August, 1857.

He first saw the stock book of the defendants the 7th or 8th of February, 1858, but denies that Campbell told him that Hughes, Akin, and others had transferred their stock, and on the 9th of February, 1858, he buys from Campbell the good-will, fixtures, safe, books, &c., of the office of the bank at Omaha, and gets $6,000 (as is argued by the plaintiff's counsel) as a gift, provided the notes were protected if presented for redemption.

In the article of purchase, Campbell agreed to retire the circulation in Nebraska, and open an office in Saint Louis for circulation and redemption, and plaintiff agreed to continue the redemption of the notes in Omaha so long as Campbell protected them in St. Louis.

The plaintiff, immediately after said purchase, took possession of the office vacated by the bank, and retained the sign of the bank, but did business in his own name; he bought up currency and stopped it on its way to Saint Louis.

Allen Campbell, who had been acting as teller of the bank of Tekama, was employed by the plaintiff as clerk, but he, never-
175 theless, attended to the old business of the bank.

It was stated by the plaintiff's counsel, in his opening speech, (though I am not aware that it was in proof,) that the plaintiff had furnished the Bank of Tekama over $200,000, to take up their currency. All persons who start banks like this, with no paid-in capital, must protect their bills for a season, in order to gain the confidence of the public, and when the public confidence is fully fixed, they shut their doors and cease to redeem. He who furnishes such a bank with $200,000, to take up their currency in less than a year, effectually aids it in its illegal purpose.

We, therefore, find the plaintiff, (if the evidence be correctly stated and of this, you are to be the judge,) a banker in Omaha, in the spring of 1857, with no previous acquaintance with Barkalow and Campbell, knowing that Barkalow was using the currency of another illegal concern; knowing that Barkalow and Campbell had purchased the Tekama charter, and that its bills were put in circulation, protecting those bills, buying out the Omaha office, retaining the bank sign over his door—agreeing that if the bank would withdraw its circulation from Nebraska, and redeem in Saint Louis,
176 that he would protect its notes in Omaha, as long as the bank redeemed in St. Louis, and continuing to circulate the Tekama currency, and stop it on its way to Saint Louis.

And it would seem as if the plaintiff's whole means were absorbed

in aiding this bank, for his clerk writes to St. Louis under great pressure, stating that he has less than $500 in bank.

If the facts are as I have stated them, and you are to determine their correctness, then Brown was an active instrument in aiding to fasten this currency on the country where it circulated, and co-operated with Barkalow and Campbell, the moving spirits in the enterprise, in their illegal transactions.

A contract growing out of an illegal transaction, or which is connected therewith, cannot be enforced.

If, in the mutual dealings between the plaintiff and the bank, the balance had been in favor of the bank, no recovery could have been had.

The plaintiff may have acted in ignorance of the law, and with no bad intention; but this does not excuse him.

It is proper to add, that several of the Indiana stockholders, as appears by the evidence, were in ignorance of the doings
177 in Nebraska; having paid nothing on their subscriptions, they gave the subject no further attention.

Their conduct was unjustifiable. They should have known the character and extent of the business with which their names were connected. It is not necessary in the determination of this suit, to decide whether an ordinary bill-holder can recover.

Having submitted these views, gentlemen, upon the law and the facts, you will take the case and make up your verdict.

178 THE UNITED STATES OF AMERICA,
District of Indiana, ss:

I, John H. Rea, clerk of the circuit court of the United States, for the eighth judicial circuit and district of Indiana, do hereby certify the above and foregoing to be a full, true, and complete transcript of the record in the above-entitled cause, as now appears of record in my office.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Indianapolis, in said district, this 30th day of October, in the year of our Lord, one thousand eight hundred and sixty-three, and of our independence the eighty-eighth.

JNO. H. REA, *Clerk.*

{ 5 cent internal revenue stamp. }

179 THE UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Caleb B. Smith, judge of the United States district court for the district of Indiana, do certify that John H. Rea, esq., is now, and was at the time of making the foregoing certificate, the clerk of the circuit court of the United States, for the eighth judicial circuit and district of Indiana, and that his attestation aforesaid is in due form of law.

CALEB B. SMITH.

{ 5 cent internal revenue stamp. }

180 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Indiana, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court before you, between William Young Brown, plaintiff, and William C. Tarkington, Ransom W. Akin, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Milton Hight, and Francis M. Akin, defendants, a manifest error hath happened to the great damage of the said plaintiff, as, by his complaint, appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next, in the said Su-
181 preme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, which of right and according to the law and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this eighteenth day of
[SEAL.] November, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States of America the eighty-eighth.

Attest: JNO. H. REA, *Clerk.*

182 *The United States of America, Supreme Court of the United States, to William C. Tarkington, Ransom W. Akin, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Milton Hight, and Francis M. Akin, greeting:*

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the circuit court of the United States for the eighth judicial circuit and district of Indiana, wherein William Young Brown is plaintiff, and William C. Tarkington, Ransom W. Akin, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Milton Hight, and Francis M. Akin are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 18th day of Novem-
183 ber, in the year of our Lord one thousand eight hundred and sixty-three.

CALEB SMITH, [SEAL.]
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
District of Columbia, City of Washington, ss:

———— ————, being duly sworn, says, that on the —— day of ——, A. D. 1863, he delivered a true copy of the within citation personally to James Hughes, defendant.

—— ————.

Sworn to and subscribed before me this —— day of ————, A. D. 1863.

—— ————.

185 Supreme Court U. S.

WM. YOUNG BROWN
vs.
WM. C. TARKINGTON *et al.* } In error.

And the said William Young Brown, plaintiff in error, now comes and says, that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The court erred in admitting in evidence the deposition of Samuel L. Campbell, and in overruling plaintiff's motion to exclude and suppress the same.

2d. The court erred in refusing to charge the jury as requested by plaintiff's counsel.

3d. The court erred in its charge as given to the jury.

4th. The said verdict is manifestly against the evidence in the case.

5th. The said judgment was given in favor of the said William C. Tarkington *et al.*, defendants; whereas by the laws of the land it ought to have been given in favor of the said Wm. Young Brown, plaintiff: Wherefore the said Wm. Young Brown, plaintiff, prays that a citation and writ of error may issue, and that the said judgment may be reversed, annulled, and held for nothing, and that he may be restored to all things he has lost by reason thereof.

G. M. LEE,
Pl'ff's Att'y.

Filed 10 December, 1863.

186 THE UNITED STATES OF AMERICA:

The Supreme Court of the United States, to William C. Tarkington, Ransom W. Akin, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Milton Hight, and Francis M. Akin, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, on the first Mon-

day in December next, pursuant to a writ of error filed in the circuit court of the United States for the eight judicial circuit and district of Indiana, wherein William Young Brown is plaintiff, and William C. Tarkington, Ransom W. Akin, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, James Hughes, Milton Hight, and Francis M. Akin, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 18th day of November, in the year of our Lord one thousand eight hundred and 187 sixty-three.

CALEB B. SMITH, [SEAL.]
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
District of Columbia, City of Washington, ss:

John T. Chancey, being duly sworn, says, that on the 29th day of December, A. D. 1863, he delivered a true copy of the within citation personally to James Hughes, defendant.

JOHN T. CHANCEY.

Sworn to and subscribed before me this 29th day of December, 1863.

JAS. H. McKENNEY,
Notary Public for Washington County, D. C.

Filed 29th Dec., 1863.

SUPREME COURT OF THE UNITED STATES.

No. ~~225.~~ 160

WILLIAM Y. BROWN, PLAINTIFF IN ERROR, vs. WILLIAM C. TARKINGTON ET AL.

Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Indiana, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court before you, between William Young Brown, plaintiff, and William C. Tarkington, Ransom W. Akin, James Hughes, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, Milton Hight, and Francis M. Akin, defendants, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next, in the Supreme Court then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, hereunto affixed at Indianapolis, this 29th day of January, in the year of our Lord one thousand eight hundred and sixty-four, of the independence of the United States of America the 88th.

[SEAL.]

Attest: JOHN H. REA, *Clk.*

This writ of error is allowed.

D. DAVIS, *Circuit Judge.*

Washington, D. C., Feb. 27, 1864.

Filed 12th March, 1864.

THE UNITED STATES OF AMERICA:

Supreme Court of the United States to William C. Tarkington, Ransom W. Akin, James Hughes, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, Milton Hight, and Francis M. Akin, greeting:

Whereas Wm. Young Brown obtained the allowance of our writ of error to the circuit court of the United States for the district of Indiana directed,

to remove into the said Supreme Court, to be holden in the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of assumpsit, wherein you, the said William C. Tarkington, Ransom W. Akin, James Hughes, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, Milton Hight, and Francis M. Akin, in that action lately recovered against the said Wm. Young Brown a judgment in your favor upon the merits and for costs, as by the said record in the said action aforesaid remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said William Young Brown we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the error aforesaid alleged, if any there be:

You are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected and the judgment of our said Supreme Court thereupon.

Witness the Honorable Roger B. Taney, chief justice of the United States of America, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth.

DAVID DAVIS, *Circuit Judge.*

UNITED STATES OF AMERICA, *District of Columbia:*

Personally appeared before me, the undersigned authority, Jason Sexton, who, being duly sworn, says that on the eighth day of March, A. D. 1864, he delivered to James Hughes, one of the defendants and counsel in the case below, and also to J. P. Usher, the attorney of record for defendants, each personally a true copy of the within citation.

JASON SEXTON.

Sworn and subscribed to before me this 8th day of March, A. D. 1864.

JAS. H. McKENNEY,
N. Public, Wash'n Co., D. C.

Know all men by these presents that we, James P. Tustin and Charles B. Church, of the city of Washington and District of Columbia, are held and firmly bound unto William C. Tarkington, Ransom W. Akin, James Hughes, Joseph M. Howe, Joseph E. Goss, William M. Akin, H. W. Springer, Milton Hight, and Francis M. Akin, in the full and just sum of two hundred dollars, to be paid to the said William C. Tarkington *et al.*, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas lately at a circuit court of the United States for the eighth judicial district of the State of Indiana, at the May term of said court, A. D. 1863, in a suit depending in said court, between William Young Brown, plaintiff, and William C. Tarkington *et al.* were defendants, judgment was rendered against the said William Young Brown, plaintiff; and the said Wm. Young Brown, plaintiff, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said William C. Tarkington *et al.*, defendants, citing and admonishing to be and appear at a Supreme

Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such that if the said William Young Brown shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else, to remain in full force and virtue.

JAMES P. TUSTIN, 316 *I St.* [SEAL.]
CHAS. B. CHURCH,
11*th St. bet. Md. Av. and C St.* [SEAL.]

Sealed and delivered in presence of—
THOS. E. LLOYD.
WM. R. BRADFORD.

Approved by—

D. DAVIS, *Circuit Judge.*

Filed 12 March, 1864.

Supreme Court of the United States.

ASSUMPSIT—No. 140.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

WILLIAM Y. BROWN, PLAINTIFF IN ERROR,

vs.

WILLIAM C. TARKINGTON, ET AL., DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

THE RECORD AND ASSIGNMENTS OF ERROR.

At the February term, in the year 1859, of the circuit court of the United States for the district of Indiana, plaintiff in this cause, now plaintiff in error, caused to be issued a summons in assumpsit against the defendants "to recover upon four notes of hand given by the bank of Tekama, an *incorporated company*, of which defendants were members," and also upon twenty-five thousand dollars currency of the

said bank of Tekama. At the May term of the court, in the same year, the plaintiff filed his declaration in assumpsit, alleging that the defendants "were *partners in business* as bankers and brokers, doing an exchange business under the name and style of bank of Tekama, and having for their president and acting agent one S. L. Campbell," and that the said defendants made and delivered their said promissory notes in writing signed S. L. Campbell, president of the bank of Tekama, and thereby promised to pay the amount thereof. The declaration, thus counting specially upon the four notes, and averring the joint promise and liability of the defendants to pay them, had also the common counts averring joint indebtedness. The defendants pleaded the general issue; and an agreement, in accordance with Indiana practice, was filed, that all evidence admissible under any form of pleading might be given. The cause was continued from term to term till the May term of the court in 1863, when the trial resulted in a verdict for defendants and judgment accordingly. The Record, which is now brought here by writ of error, contains, in addition to the pleadings, the rulings and other proceedings of the court, including verdict and judgment, a Bill of Exceptions, embracing all the evidence, oral and documentary, given at the trial, together with the whole charge given by the court to the jury, and also a series of Instructions covering seven distinct points, which the plaintiff requested the court to give in bulk to the jury, and which the court, being so requested, did not give. After reciting the evidence in the case, the Bill of Exceptions, at page 31 of the Record, closes as follows:

"And the foregoing was all the evidence given in said cause.

"And thereupon the plaintiff requested the court to charge the jury in the words and figures contained in the written request of plaintiff, hereto appended and made a part of this bill, marked K. (Rec., pp. 70 and 71.) Whereupon the court charged the jury in the words and figures contained in the written charge of the court hereto appended and made a part of this bill, marked L. (Rec., pp. 70 and 76.)

To which charge of the court as given, and its refusal to charge as requested, particularly as to the charge and ruling of the court, that if plaintiff had aided in carrying on said bank and circulated its currency, and aided in obtaining credit therefor, he could not recover; the plaintiff excepted, and prayed that his bill of exceptions might be signed, sealed, and ordered to be recorded, which is done and ordered accordingly."

No other exception by plaintiff in error appears in the Bill of Exceptions than those thus generally stated in its closing paragraph; but at page 17 of the Record it appears that before this trial, and on the 9th of December, 1861, it being shown to the satisfaction of the court that process had been duly served on one of the defendants, Samuel L. Campbell, more than fifteen days before the first day of that term; he was duly called and made default, and afterwards at the same term, on the 20th of May, before his Honor Mr. Justice Swayne, then holding the court, the plaintiff moved "to suppress the deposition of Samuel L. Campbell, taken since the last term of court," which motion the court then overruled, to which ruling the plaintiff excepted.

Plaintiff's motion to suppress and exclude having thus been overruled by Mr. Justice Swayne, and the ruling excepted to by the plaintiff, the deposition of Campbell was, upon the trial *at the subsequent term* without further exception by the plaintiff, admitted in evidence by his Honor Mr. Justice Davis, who presided at the trial of the cause.

At page 19 of the Record we have the following paper:

"CIRCUIT COURT UNITED STATES, DISTRICT OF INDIANA.

"WM. Y. BROWN *vs.* WM. C. TARKINGTON.

"The plaintiff moves to suppress and exclude the deposition of Samuel L. Campbell, taken by defendants, and for cause shows—

"1st. The certificate of the officer does not show that plaintiff or his counsel were not within one hundred miles, or did not reside within one hundred miles of Carbondale, where this deposition was taken.

"2d. The deposition is not properly directed.

"3d. The deposition does not appear to have been sealed up by the officer, or to have been retained in his possession till sealed up.

"4th. The commission under which the deposition is taken is informal and insufficient.

"5th. The deposition is not certified to have been subscribed in the presence of the officer, or to have been reduced to writing in his presence.

"6th. The deposition does not appear to have been properly transmitted or opened.

"7th. The questions are all leading.

"LEE & FISHER, *for Plaintiff.*

"INDIANAPOLIS, *November* 10, 1863.

"I hereby certify the above to be a true copy of the original on file in my office.

"JOHN H. REA, *Clerk.*"

[There is nothing in the Record to show that the above paper was brought to the attention of the Court in any way on the trial of the cause. It is, indeed, inserted in the Record immediately before the entry of the verdict and the judgment; but it is not embraced in the Bill of Exceptions; and though it purports to state the grounds in support of the motion to suppress and exclude the deposition of Campbell, it fails to give the ruling of the Court upon that motion, and does not indicate any exception by the plaintiff to that ruling, whatever it may have been. On the contrary, the deposition in question appears in the Bill of Exceptions, at page 24 of the Record, to have been admitted in evidence on the trial without any exception to its admission by the plaintiff. Thus it would seem that the paper is misplaced in the Record, and should have appeared at page 18, as a part of the proceedings at the May term of 1862—a year before the trial term—when the motion to suppress and exclude the deposition was made and overruled and the overruling excepted to. It is, therefore, to say the least, very doubtful whether any question as to the admissibility of Campbell's deposition is so presented in the Record as to be properly the subject of review by this Court under this

writ of error, no exception to its admission at the trial being included in the Bill of Exceptions. (Pomeroy's Lessee *vs.* Bank of Indiana, 1 Wallace, 600.) If any such question is now here, it can only be whether the preliminary motion to suppress and exclude at the term previous to the trial term was properly overruled. The overruling of such preliminary motion would seem to be within the discretion of the Court, and therefore not assignable as error, the object of the motion itself being to prevent a surprise upon mere point of form at the trial. And, as the party moving to suppress always retains his right to except to the admission of the deposition at the trial when offered in evidence, his failure so to except at the trial may well bar his right now to assign as error the decision overruling his preliminary motion. (Wellborn *vs.* Swain, 22 Ind., 195; Ib., 251, Adleman *vs.* Swartz. See also N. Y. Man. Co. *vs.* Ill. C. R. R., No. 107 decided here this term.)

However this may be, it is obvious that the deposition itself, as included in the Bill of Exceptions, and given at length at pages 50–54 of the Record, wholly refutes all the material allegations made in support of the motion to suppress and exclude, while the second and sixth of these allegations, touching the direction, transmitting, and opening of the deposition, find no support in any part of the Record.]

THE FACTS OF THE CASE, as proved in the testimony brought up in the Bill of Exceptions, and for the most part undisputed, are stated briefly, but with great distinctness, in the charge to the jury, on pages 73, 74, and 75 of the Record. They will be further referred to, if necessary, in the course of the argument.

POINTS.

FIRST POINT.—The motion to suppress and exclude the deposition of S. L. Campbell was properly overruled, (Rec.,

p. 18,) and the deposition (Rec., pp. 50–4) was properly admitted in evidence.

(*a.*) It was a deposition taken *de bene esse* under the 30th section of the judiciary act of 1789, and was *ex parte* only in the sense contemplated and authorized by that section; and was no more *ex parte* in any sense than the depositions introduced by the plaintiff at pages 42 and 43 of the Record, and refusal to suppress it can in no wise be held such error as to affect the judgment below, because there is in the case more than enough to support the judgment even if the deposition had been excluded. (3 Ind., 303.)

(*b.*) No particular form of a *commission*, if indeed any commission at all, is required by law for the taking of such deposition *de bene esse*. The section itself operates as a commission to the officers whom it designates to take such depositions, and carefully prescribes the manner and conditions of their taking, authentication, and return. But here there *was* a commission drawn in *verba statuti*, and duly issued by an officer expressly authorized by law to issue it, (see act 1 March, 1817, 3 Stat., 350, and act 26 February, 1853, 10 Stat., 163.) And the commission was executed and the deposition was duly taken, authenticated, and returned by an officer expressly authorized so to do. (See act 29 July, 1854, 10 Stat., 315.)

(*c.*) The certificate of the officer taking such deposition is not the *only* competent proof of the fact that the plaintiff and his attorney resided at so great distance from the place of taking the deposition as to supersede the necessity of giving notice. The fact of such distance may be fully proved *aliunde*, Voce *vs.* Lawrence, (4 McLean, 203–5,) Travers *vs.* Bell, (2 Cr. C. C., 160.) Here the fact of such distance is fully proved by the affidavit of Roache, which affidavit is returned by the officer, with his certificate, and expressly made a part of it. The fact then is fully proved *both* by the

certificate and *aliunde;* and either of these modes of proof would alone satisfy the statute.

(*d.*) The distance of the *residence* of the plaintiff and his attorney being thus duly proved, threw upon the plaintiff the burden of proving that at the time of taking the deposition they were—one or both—*actually* at some nearer place. Until such proof should be made by plaintiff, the proof of *distant residence* was entirely sufficient to dispense with the necessity of notice. This is the very point expressly and unanimously decided by this Court in the conclusive case, Dick *vs.* Runnels, (5 How., 9.) Here the plaintiff attempted no such proof of *actual* presence at a nearer place.

Second Point.—The court did not err in omitting to charge the jury as requested by plaintiff's counsel in the paper marked "K." (Rec., pp. 70, 71.)

(*a.*) As the seven points of instruction embraced in this paper were requested to be given to the jury *in their entirety*, the plaintiff, in order to sustain his allegation of error in the refusal to give them, must show that the court was bound in law to give them *all* to the jury as stated. If *any part* of any one of them was bad in law, or irrelevant to the issues before the jury, then the court did not err in refusing to grant the plaintiff' request. This is the well-known doctrine and rule of this Court, which has often and recently animadverted with severity upon the irregularity of form exhibited in this assignment of error.

Harvey *vs.* Tyler, 2 Wallace, 339.

(*b.*) The fourth instruction requested by the plaintiff is error in law. Certainly it is not true, as a general proposition of law, that promissory notes of any bank, signed by its president, stand upon the same footing and create the same obligation as its bank-bills circulating as money.

(*c.*) But the conclusive objection to giving these instructions to the jury is in the fact that they have no relevancy

whatever to the case under trial, save upon two assumptions, both of which are refuted and repelled by the whole tenor of the testimony, and which, being both of them matters of fact for the jury to determine upon all the evidence, could in nowise properly be presumed or prejudged by the court. These erroneous assumptions are:

First, That plaintiff, when he bought into the business of the bank, and subsequently became, as he alleges, in the course of his dealings with it, its creditor, and so the creditor of all its original stockholders, was both innocent and ignorant of any unlawfulness in the character, organization, and operations of the bank;

Second, That when Brown, the plaintiff, took part in the business of the bank, and through his part in that business became its creditor, he had not received notification, and did not have knowledge, that several of the stockholders whom he has sued as jointly liable, among them Tarkington, Hughes, and R. W. Ransom, had already given up or sold out the shares in the concern for which they had subscribed, and had thus wholly withdrawn from connection with it.

Now this guilty knowledge of the unlawful operations and character of the bank, and this voluntary co-operation in that unlawful business, are fully fixed upon Brown, the plaintiff, by his own testimony at pages 20, 21, 22, and 23 of the Record; for he testifies that, being at the time engaged in private banking at Omaha, he knew all about the charter and its transfer to Campbell and his two confederates, and the organization of the bank under it, and that he had seen the articles of association and the stock-book of the bank, before he bought that part of its general banking business, which was done at the Omaha office both before and after Brown bought it. F. M. Akin testifies distinctly, at page 24 of the Record, that the purpose of Campbell, Barkalow, and himself was to organize the bank under the charter which they had bought for that purpose, and that with that purpose he, Akin, drew the articles of association. In all this F. M. Akin is wholly uncontradicted, and it was fully admitted by both parties that the charter had no legal valid-

ity. But S. L. Campbell, in his deposition, goes further, and fully fixes upon Brown the knowledge of the fact that several of the stockholders, whom he has made defendants in this suit, had retired from the bank and given up their shares before Brown had any dealings with it. Campbell testifies explicitly that he himself informed Brown of this fact, and of the character and condition of the bank, before Brown bought into its business, or had, so far as appears, become its creditor.

Upon the face of the case, therefore, it is most manifest that Brown is no innocent third party; therefore any instructions to the jury which assume that he is so would have plainly been improper, as well as irrelevant, and were rightly excluded.

Rhett *vs.* Poe, 2 How., 483.

(*d.*) But the court, as if out of abundant caution, and in order to give to the plaintiff the advantage of any possible doubt which the jury might have as to his guilty knowledge and co-operation, did, in its charge, (Rec., p. 72,) embody so much of the matter embraced in the instructions requested by the plaintiff, as could by any possibility bear upon the plaintiff's right to recover in any view which the jury might take of the case.

These considerations are regarded as a sufficient reply to the second, third, fourth, fifth, and sixth of the points contained in the Brief for the plaintiff in error.

THIRD POINT.—If the bank was organized under the charter granted on the 13th of February, 1857, by the territorial legislature of Nebraska, (Rec., p. 57,) then its organization and operations were wholly unwarranted and unlawful.

The charter being wholly invalidated by the act of Congress of July 1, 1836, (5 Stat., p. 61,) could authorize nothing. Therefore to buy it, and issue bank-bills under it to circulate as money, was plainly to use it for a purpose which it could not warrant or authorize, and which was against

public policy as declared by act of Congress. Such use of a charter is clearly unlawful at common law.

Rex *vs.* Webb, 14 East., 406.

FOURTH POINT.—The articles of association, (Rec. pp. 31–4,) being avowedly framed for the purpose of organizing a bank under that charter, and with that view providing for and making, as they do in the 18th article, purchase of that charter and payment therefor out of the capital stock of the association, were in themselves an agreement to form a partnership for the purpose of carrying on an unlawful banking business.

FIFTH POINT.—Therefore in any view of it the organization and business of the bank, whether under the articles or under the charter, were unlawful; and this, the plaintiff being himself a banker at Omaha, must have known, and be presumed to have known, and is fully proved to have known, and indeed confesses that he did know. He gave then no lawful consideration for the promissory notes which he received from Campbell, and cannot recover upon them; still less can he maintain this action upon the Tekama bank-bills, which he received in the course, and as the direct result, of his own wrong-doing.

Batty *vs.* McCundie, 3 C., p. 203.

1 Lindley Law of Partnership, (London, 1865,) p. 157, and cases there cited.

These considerations and authorities are a sufficient reply to the seventh point of the brief of the plaintiff in error, and fully sustain the charge to the jury as against the only specific assignment of error.

SIXTH POINT.—Nor did the promissory notes given by Campbell to plaintiff in the settlement of plaintiff's account with the bank constitute or show any new and independent promise, untainted by the original illegality of plaintiff's participation in the business of the bank.

On the contrary, the state of that account being the only

consideration upon which those notes were given, resulted directly and immediately from the illegal doings and dealings of the plaintiff in co-operation with the bank. The leading case, cited by the plaintiff in the eighth point of his brief, is therefore conclusively adverse to the view which in that point he presents and attempts to sustain.

Armstrong *vs.* Toler, 11 Wheat., 258.

SEVENTH POINT.—Verdict and judgment in this action must be for defendants, because the plaintiff in his pleadings affirms the *joint liability and indebtedness* of *all* the defendants, and there can be no pretense that those stockholders whose withdrawal had been duly made known to him, before he had any claim against the bank, can be jointly held to pay a debt to him by the bank contracted after such notice of withdrawal. (See the leading cases collated and analyzed in note, 1 Parson's Contracts, p. 12, 4th ed.)

EIGHTH POINT.—On these grounds it is respectfully submitted that the law of the case was correctly stated in the charge to the jury, and that the judgment of the circuit court in this cause should be affirmed with costs.

C. EAMES,
Of Counsel for Defendants in Error.

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UNITED STATES SUPREME COURT.

WM. YOUNG BROWN,

vs.

WM. C. TARKINGTON, *et al.*

Error to the Circuit Court U. S. Indiana District.

G. M. LEE,
Plaintiff's Attorney.

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UNITED STATES SUPREME COURT.

WM. YOUNG BROWN,
vs.
WM. C. TARKINGTON, *et al.*

Error to the Circuit Court U. S. Indiana District.

This was an action of assumpsit brought by plaintiff to recover from defendant, upon four promissory notes, signed S. L. Campbell, President of the Bank of Tekama, payable to plaintiff, and amounting to $12,877\frac{50}{100}$ upon their face. Also, to recover the amount of $2500 upon the currency in the semblance of bank bills issued by said Bank of Tekama. This Bank of Tekama was an institution doing business in Burt County in Nebraska Territory. It issued bills which circulated as money, in the similitude of bank bills. The defendants were stockholders or partners in said bank, and plaintiff claimed they were liable, both upon promissory notes executed by its President, and upon its bills which were circulated as money. Defendants denied they were stockholders or partners in this Tekama Bank; denied they were liable for its bills; denied the authority of S. L. Campbell, its President, to execute its notes and issue its bank paper, and claimed that the notes and bills were without consideration and void, and that plaintiff had improperly

obtained them from President Campbell in fraud of defendants' rights. The declaration was in the usual form, counting specially upon the four notes, and having also the common counts. The plea was the general issue in substance, with an agreement in accordance with Indiana practice, that all evidence admissible under any form of pleading might be given. On the the trial plaintiff put in evidence the four promissory notes, and also currency of the Bank of Tekama amounting to $17,727, all of which currency except $227 he admitted was held to secure the same debt, evidenced by the notes, and only claimed to recover $227 upon the currency in addition to the amount of the four notes. The plaintiff also put in evidence exhibits "A" & "F" contained in the record; and the depositions of Benjamin B. Barkalow, Lyman Richardson and George L. Miller, as well as his own evidence and that of Laz. Noble, all contained in the record, whereby he claimed to have proven the execution of said notes and bills, and the connection of defendants with said bank as stockholders or partners therein. The defendants then put in evidence an exemplified copy of a charter granted by the Legislature of Nebraska to certain persons to incorporate a bank to be called the Bank of Tekama; also certain papers in the nature of assignments by the corporators of said bank to Campbell & Aiken, defendants; also exhibit "N," together with various letters written by plaintiff, and the deposition of Saml. L. Campbell, with the oral evidence of Francis M. Aiken and Ransom W. Aiken. Thereby they claimed to have proven that said Bank of Tekama was not a corporation, was not organized as such, and that the Legislature of Nebraska had no power to charter such a bank; that most of defendants had assigned their stock in the same, to the knowledge of plaintiff, before he began to deal with said bank; that plaintiff had aided to carry on said bank and to increase its illegal circulation, and therefore could not recover. Thereupon the plaintiff requested the Court to charge the jury (see exhibit "K.") Several

of these charges the Court refused to give, but charged the jury as contained in exhibit "L".*

1st.—I claim the Court erred in admitting in evidence the *ex parte* deposition contained in the record of Saml. L. Campbell, taken under Sec. 30 of the Act of 1789. A sort of Commission is attached to this deposition issued by the clerk of said Court, but not in accordance with any order of a Court or judge, as required by law and by rules 25, 27, or 67 of this Court, and said commission is irregular and void. No notice was ever given under it, nor were any interrogatories ever filed by either party, as required by law and by said rules. It became necessary therefore for the defendants, when offering said deposition, to show by the certificate of the magistrate that neither the plaintiff nor his counsel were within one hundred miles of the place of taking the deposition when taken. The officer does not so certify, and the deposition should have been excluded—see Sec. 30, Act 1789. Bell vs. Morrison, 1 Pet. 351. Harris vs. Wall, 7 How. 704. There is an affidavit attached as an exhibit to this deposition which it may be claimed proves this absence of plaintiff and counsel, but this section has made the certificate of the magistrate the only proof. It has put upon him the responsibility of asserting and stating this absence of the plaintiff, and the act being in derogation of the common law is to be strictly construed, and allows no other proof than this certificate. Harris vs. Wall, 7 How. 704.

2d.—The plaintiff requested the Court to charge, that if any defendant authorized another to sign his name as it ap-

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* I regret that both the entire evidence and charge are in this record, and am aware it does not accord with Rule 38, nor with the Ruling in Evans vs. Eaton. Pennock vs. Dialogue, Carver vs. Jackson, Ex parte Crane & Haussknecht vs. Claypool; but the bill is thus drawn by order of the learned Judge who tried the cause.

pears in the stock book of said Bank, or knowing the name was so signed assented thereto and permitted it to remain, he is equally liable as if he had written the name himself. This charge the Court not only refused, but in lieu thereof charged the jury that "it is immaterial in the view taken of this case by the Court to determine whether the Bank was organized according to law." And at the close of the charge the Court add: "It is not necessary in the determination of this suit to decide whether an ordinary bill holder can recover." Now one of the main questions at issue was, whether these defendants had signed by their own hands, or by the authorization of others, the stock book and article exhibit "A" in the record. Upon this plaintiff relied to fix their liability. Upon the fact that they had not signed it, defendants rested their defense. This was a fact which the jury had to pass upon and find. The Court could not relieve them from this responsibility; could not withdraw the evidence on this point from them, nor could the Court pass upon and find this fact in lieu of the jury. Still the Court by this refusal to charge as requested, and by the charge as given, undertook to pass upon the fact and did withdraw it from the consideration of the jury, which was error. See United States vs. Tillotson, 12 Wheat. 180. Greanleaf vs. Birth, 9 Pet. 292. Ches. & Ohio Canal Co. vs. Knapp, 9 Pet. 541.

3d.—The plaintiff requested the Court to charge upon the effect of his four promissory notes and the articles of association as follows: "that by the articles of association power is given to S. L. Campbell to act as President of the Bank of Tekama and to sign the notes thereof, and notes signed by said Campbell, in his capacity of President, if given for a proper consideration, are equally binding upon the stockholders defendants as if given by them in person." The effect of these notes was a highly important and a disputed question upon the trial, yet the Court in its charge ignores entirely

this question and request, and refuses this charge. The effect of these notes was undoubtedly what plaintiff claimed. See Chitty on Con. 273–4. Parsons on Contracts, Vol. I. 151–163. Story on Part. §102. And the charge should have been given.

4th.—The plaintiff requested the Court to charge the jury that "the bank bills and promissory notes of the Bank of Tekama, signed by its President, stand upon the same footing and create an equal obligation." This charge the Court not only refused to give, but at the close of their charge remark that "it is not necessary in the determination of this suit to decide whether an ordinary bill holder can recover." Now the plaintiff claimed to be an ordinary bill holder, and to have received a portion of this currency in his Bank transactions, besides what he held to secure the four notes; and the effect of this charge was, to find for the jury that plaintiff was not such a bill holder, and that the bank bills and notes were not equal evidence of indebtedness for plaintiff. This question should have been left to the jury. See cases before cited. The notes and bills, by defendants' articles of association, did stand upon an equal footing, and so the Court should have charged. See article 8 of Exhibit "A."

5th.—The plaintiff requested the Court to charge "that if any defendant who had not signed said stock book became aware of the fact that his name was signed thereto by another, and of the organization and operation of the Bank of Tekama, and was published to the world as a stockholder thereof by its officers, and took no action to contradict the assertion that he was such stockholder, but allowed himself to be published to the world as such stockholder, he is liable to the same extent as any other stockholder, who signed said stock book himself." It was a contested question whether several of defendants had signed said stock book and articles of association, but it was an undisputed

fact that the circular Exhibit "F" had been published, which announced all the defendants as stockholders. Hence this instruction became material, and it was the undoubted law. See Chitt. on Con. 263–267. Story on Part. 160–164. Collyer on Part. §1081. Buckingham vs. Burgess, 3 McLean, 364. But the Court refused the instruction.

6th.—The plaintiff claimed that his object and design in making with President Campbell for the Bank the contract Exhibit "N" was, to take up the outstanding currency and retire the amount then in circulation, being about ten thousand dollars; and so Art. 3d of Exhibit "N" states. This was clearly for the interest of the defendants. It relieved them of liability. Plaintiff claimed to have done no more than this, and denied that he had increased the circulation of said Bank. He stood then in the position of an ordinary bill holder, and held the four notes given by President Campbell on settlement, in lieu of the redeemed bills which had been accounted for and surrendered or destroyed; or he may be considered an ordinary bill holder, holding the identical bills he had redeemed; for some, put in evidence, are the identical bills redeemed, and the remainder are duplicates given by the President to plaintiff to evidence the very debt created by redemption. Yet the Court in its charge not only ignored this claim and position of plaintiff, but charged the jury that "it was not necessary in the determination of this suit to decide whether an ordinary bill holder could recover." This was manifest error; for if the bill holders from whom plaintiff purchased the currency could have recovered off the defendants, clearly plaintiff by his purchase of their negotiable bills could recover also. The Court in its charge have throughout assumed the proof had established that plaintiff aided in carrying on this Bank and had used his money to increase its circulation, and by its charge force the plaintiff into this position. I deny that such was plaintiff's position, and that the proof so showed. I assert he was but an ordinary

bill holder as to the greater part of his claim, and should have been so treated by the Court in its charge. But whether my claim is correct or not is a fact which the jury should have been allowed to find. The Court had no right either to find or assume it. The Court by its charge found and defined the position of plaintiff, and thereby infringed upon and absorbed the province of the jury, leaving little or nothing for them to do under the charge but to render a verdict for defendants, whereas they should have been left perfectly free upon the facts. The whole charge is objectionable and erroneous in this respect. See former cases, and particularly Ches. & Ohio Canal Co. vs. Knapp, 9 Pet. 541.

7th.—The Court here went so far in its charge as to instruct the jury, that if plaintiff had furnished this Bank funds to redeem its currency, and thereby given it credit and enabled it to increase its circulation, that he could not recover any balance upon an account due him for such funds; nor could the Bank recover if the balance were due them, because the transaction would be illegal. This also I claim is erroneous. Upon what principle of public policy is it that men are liable upon plain negotiable paper and are released from liability whenever they put pictures upon this same paper? There is no difference in the legal effect of ordinary negotiable paper payable to bearer, and a bank note. Both equally bind the maker. Both pass equally from holder to holder by delivery. Bouviers' Law Dictionary, 156. Sometimes in commercial transactions the blank note is beautified almost as much as a bank bill. Beauty increases, not decreases value. What prevents any association of persons in any State of the Union, where no Constitution or Statute to the contrary exists, from assuming such name as they please, and issuing paper in such form as they please, to be used by the public as they please, always holding the makers liable? When does the common law make void such paper and relieve the maker from his just liability thereon? Is it

when the maker first delivers his note, or after the public begin to use it, and through how many hands must it pass to retain or release the liability? I respectfully submit that the idea that the liability of a person or association depends upon the greater or less similitude of their paper to a bank bill, or upon the fact that their paper is as beautiful as a bank bill, or is an exact duplicate of a bank bill, is clearly erroneous. Nor is the idea that this liability depends upon the greater or less extent of the circulation of this paper, or the place where it is delivered from hand to hand, or the number of times it passes from holder to holder, any more tenable. I am well aware of the doctrine of the failure of consideration by reason of the illegality of a contract. It is to be found in all the elementary authors which treat on contracts, and the well recognized doctrine is, that such contracts, having such illegal consideration, are void, and the Court will help neither party, but leave the plaintiff without relief, just as it finds him, holding "*potior est conditio defendentis.*" But I find no case either in the elementary books or reports where this doctrine has been applied to *paper* because it had the similitude of bank bills, or was in form a bank bill. The precedents set by all the States are to the contrary. When the State of Indiana desired to stop the circulation of such paper, it provided against it by the 9th Section of its Constitution; plainly implying that at common law it was not void, else why was the provision needed? To this effect also is the opinion of the Supreme Court of Indiana, in Brown vs. Killian, 11 Indiana, 449. They base their opinion that the bank bills in this case are void, solely on their Constitutional provision. So also the State of Ohio, by Act of January 27th, 1816, entitled "an Act to prohibit the issuing and Circulation of Unauthorized Bank Paper," amended March 18th, 1839, seems, through her Legislature, to have indicated the opinion that the issuing of bank notes was a common law right, to be curtailed and restricted only by express statute; and the doctrine of her Supreme Court in

Lawler vs. Walker, 18 Ohio, 151, is to the same effect. This was a case where a canal company, without charter power, had put in circulation notes in the similitude of bank paper, on which the stockholders were sued individually, and the judge, who delivered the opinion, page 157 says: "I would, therefore, as one member of the Court, feel prepared to say that the defendants were liable for the redemption of these notes by the rules of the common law. * * * They can escape pecuniary responsibility by taking refuge behind their franchises only when found pursuing the legitimate object for which these franchises were granted. * * * If they engaged in other and different pursuits, they must do so under all the obligations and responsibilities of ordinary partners in business."

That these notes were void because they were like bank bills, or had circulated as money, did not here enter the mind either of Court or counsel.

It will be remembered that this Bank was put in operation beyond State limits and within the Territory of Nebraska, which not only had neither a Statute nor Act of Congress making void this bank paper, but had granted a Charter to authorize it. It is true that, July 1st, 1836, Congress, in passsing an Act entitled "An Act to disapprove and annul certain Acts of the Legislature of Florida," provided "that no Act of the Territorial Legislature of any of the Territories of the United States incorporating any bank or any institution with banking powers and privileges hereafter to be passed, shall have any force or effect whatever until approved and confirmed by Congress." But the Act was intended, I think, to be local in its character, as its title indicates, and as its later sections, which disapprove and annul specific Territorial Acts of Florida, indicate; and the Act has become obsolete, and is omitted in the late compilations. Besides the Act does not reach this question; for it no where provides that persons issuing such bills shall not be liable upon them, or that the bills thus issued shall be

void in the hands of the holders. By every apparent principle of law and justice, the maker or issuer of paper should be liable upon it. For he receives its value. So the paper imports, and such is here the fact. It is only upon the assumption that the public will inevitably be swindled by unauthorized paper when it assumes the similitude of a bank bill that the law can say it shall be void in the hands of every holder, in order to crush out its circulation forever. I claim the American common law has never reached this point; nor can a Court so declare the law to be, or find that the public necessity to so declare and announce the law exists. A Statute or Constitution alone can fix this point by reason of the public necessity, and proclaim and make this the law, and here there is no such Statute or provision.

8th.—If, however, the original circulation of this paper by the Tekama Bank was illegal, the payment of this money by plaintiff for the use of defendants, at their request to redeem their bills, was not illegal, nor was their promise to reimburse him this money, evidenced by the notes he held, illegal; and upon this new promise, evidenced by their notes, he was entitled to recover; for this promise was not tainted by the original illegality, nor the immediate offspring of the illegal act of defendants. Keeble vs. Hannay, 3 Term. Rep. 318; 6 Term. Rep. 410. Bird vs. Appleton, 8 Term. Rep. 562. Faikney vs. Reynous, 4, Burr, 2069. Farmer vs. Russell 1, Boss & Pull, 295. Ex parte Bulmer, 13 Ves. 313. Hodgson vs. Temple, 5 Taunt. 181. Toler vs. Armstrong, 4 Wash. 297. Armstrong vs. Toler, 11 Wheat. 258. Cutts vs. Phalen, 2 How. 376.

But the Court by its charge seem to have forgotten this new and independent promise, and entirely exclude it from the consideration of the jury, by charging them substantially that if plaintiff had furnished funds to enable this Bank to do business, he could not recover any balance which might be due him for money so furnished, erroneously forgetting

that the new promise, evidenced by the notes, gave plaintiff an independent right to recover for a legal consideration, founded upon the money paid for the use of defendants, at their request to redeem their bills.

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